IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In the matter of:	)	
	)	
GARLOCK SEALING TECHNOLOGIES, LLC, et al.,	)	No. 10-31607
	)	Jointly Administered
	)	Charlotte, NC
Debtors.	)	May 26, 2011, 9:31 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GEORGE R. HODGES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

Garland S. Cassada
Jonathan C. Krisko
Richard C. Worf, Jr.
Robinson, Bradshaw & Hinson
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

John R. Miller, Jr.
Rayburn, Cooper & Durham, P.A.
227 West Trade Street, Suite 1200
Charlotte NC, 28202-1672

Electronic Recorder Operator:	Cecelia Burr
Transcriber:	Patricia Basham 6411 Quail Ridge Drive Bartlett, TN 38135 901-372-0613

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

APPEARANCES:

Jonathan P. Guy (Telephonically)
Orrick, Herrington & Sutcliffe LLP
Columbia Center, 1152 15th Street, N.W.
Washington, DC

A. Cotten Wright
Grier, Furr & Crisp, P.A.
101 N. Tryon St., Suite 1240
Charlotte, NC 28246

Travis W. Moon
Moon Wright & Houston, PLLC
227 West Trade Street
Suite 1800
Charlotte, NC 28202

Trevor W. Swett III
Caplin & Drysdale, Chartered
One Thomas Circle, N.W., Suite 1100
Washington, DC 20005

Hillary B. Crabtree
Moore & Van Allen PLLC
100 N. Tryon Street, Suite 4700
Charlotte, NC 28202-4003

Deborah L. Fletcher
Fisher Broyles LLP
6000 Fairview Rd
Suite 1200
Charlotte, NC 28210

EXHIBITS

NO.	DESCRIPTION	ID	ADM
GST 156	Rust Consulting, Inc. Proposed Questionnaire Form	18	107
GST 157	Garlock's Proposed Stipulated Protective Order	107	107
GST 158	Garlock's Proposed Order as to Claim Questionnaire	12	107
GST 159	Garlock's Proposed Mesothelioma Claim Questionnaire	6	107
ACC 104	Combustion Engineering 524(g) Asbestos Pl Trust Proof of Claim Form	40	105
ACC 105	Red lined copy of last version of the Garlock proposed questionnaire form	46	105
ACC 106	Committee's updated version of proposed order to issue questionnaire and governing of the confidentiality of information	47	105
ACC 107	Red lined copy by the committee of the debtor's last version of the proposed order authorizing the debtors to issue questionnaire and governing of the confidentiality of information	47	105
ACC 108	Summary of Debtor's Fees and Applications	88	105

(CALL TO ORDER)

THE COURT: Good morning. Have a seat.

COUNSEL: Good morning.

THE COURT: We will, I guess, get you all's voices on the machine. Why don't we start with Mr. Krisko over here and just go across.

MR. CASSADA: Good morning Your Honor. This is Garland Cassada from Robinson, Bradshaw & Hinson. I am here with Jonathan Krisko and Richard Worf.

THE COURT: Okay.

MR. MILLER: Good morning, Your Honor. Jack Miller, Rayburn, Cooper & Durham on behalf of the debtors.

MS. CRABTREE: Good morning, Your Honor. Hillary Crabtree from Moore & Van Allen on behalf of Coltec Industries.

MS. FLETCHER: Your Honor, Deborah Fletcher for the trade creditors committee.

MR. SWETT: Good morning, Your Honor. Trevor Swett for the Official Committee of Asbestos Personal Injury Claimants, along with Tom Moon.

MS. WRIGHT: Good morning, Your Honor. Cotten Wright, here on behalf of the FCR, and I believe that Mr. Guy will be on the telephone.

THE COURT: Okay.

MR. GUY: Good morning, Your Honor. I am on the phone. Thank you for letting me appear.

THE COURT: Good. Well, we will proceed, then. Mr. Miller, do you want to take us through?

MR. MILLER: Sure. I will grab M.C. duties. We only have two items on the agenda for hearing today, and one of them is a continuation of the personal injury questionnaire matters that you have heard a number of times. I believe Mr. Cassada or Mr. Worf are going to handle sort of giving you an update about where we are on that and any issues that remain outstanding.

And then the only other item that's on is the Caplin and Drysdale's second interim fee application.

THE COURT: All right. Do you want to do the questionnaire first?

MR. CASSADA: Yes, Your Honor. Hopefully today we can complete the personal injury questionnaire. There is also an order approving the questionnaire and it will provide for certain logistics with respect to service and what-not, and hopefully we can complete that or at least establish a schedule for getting that completed, probably presenting competing orders that Your Honor can choose from.

But as a matter of update, we have undertaken to agree on the form of the questionnaire consistent with our understanding of the court's rulings. We have been successful in reducing disagreements to a very short list.

So as the court knows, the questionnaire in the

debtor's view falls far short of what we requested and it fails to require that claimants provide information necessary to determine the enforceability and value of claims under applicable law, as we believe code section 502 requires. But we do believe that, by the end of the day, you can consider two points and we will have a questionnaire consistent with Your Honor's ruling.

The questionnaire order, on the other hand, has been very difficult to reach agreement on. There are a number of issues that separate us, most of which the court has not had an opportunity to consider. They are the type of things that parties do try to agree on without the assistance of the court, and I believe there are important logistics that we have agreed on but there are other things that will require the court's assistance.

So Mr. Worf will explain the differences that separate us on both the questionnaire and the questionnaire order and he will present our arguments.

THE COURT: Okay.

MR. WORF: Good morning, Your Honor. I would like to begin by passing out the debtor's current version of the questionnaire, if I may approach.

THE COURT: All right.

(Pause)

MR. WORF: And this is marked GST 159. The areas of

disagreement, as Mr. Cassada said, boil down to two now, and they both relate to the court's ruling on May 12 that claimants they should attach their trust claim forms to their completed questionnaire.

As the court may recall, that's what the court ordered and claimants also have the opportunity, in lieu of attaching those claim forms, to execute an authorization to obtain the trust claim forms from the trusts themselves, which would relieve the claimants of the burden of having to attach them if that's what they prefer.

Those versions, the committee's version and the debtors' version, now contain the requirement that trust claim forms be attached and they also contain the authorization which the committee had substantial input on the form of that authorization and the debtors accepted virtually all of those suggestions except for one that I will get to in a second.

When the debtors wrote their requirement to attach trust claim forms, here is how we put it. It's in part eight of the current questionnaire. It is page fourteen. And we wrote it this way:

"Attach copies of all trust claim forms submitted by or on behalf of the claimant or injured party to trusts listed in table-B (including all evidence submitted to meet the exposure requirements of the trust but excluding, if you wish, medical information

submitted to the trust)."

We put that in there to clarify that we don't need the medical part of the attachments to the trust claim form. That's not something that we are interested in or that our experts need and just wanted to make clear that the claimants don't have to provide those pages which can sometimes be lengthy, although if they want to, that's fine, too.

The attachment of the exposure evidence that the claimant submitted with their trust claim form is the current area of dispute. It is our belief that the exposure evidence is an integral part of the trust claim form that the claimants submit. Most trusts, as the court has heard, have both exposure and medical requirements, and sometimes those exposure requirements are satisfied by the claimant signing something in the body of the actual form or stating something in the body of the actual form, but other times they say "See Exhibit-A," and Exhibit-A is an affidavit of exposure of some kind that describes how they were exposed to the product for which the trust is responsible. So I have an example of what that looks like that I will pass out, if I may approach.

(Pause)

MR. WORF: This is an excerpt from GST 137, which we previously marked, and this was a claim form submitted to the National Gypsum Trust by an individual named Mr. Puller, and this is the two-page certified statement of exposure that he

had attached to his trust claim form. As the court can see, it is relatively short but it contains material facts. He says in paragraph two, admits that the decedent was exposed to asbestos containing materials and breathed air containing particles of dust arising from such materials from the years 1973 to 1978. It then says the locations where the person worked where National Gypsum products were located and then certifies that.

So facts like that in this particular instance would not be in the body of the claim form, they would be in the short attachment, and those facts are material to us and to our experts because that's an area of dispute, is what are the claimants admitting when they submit these claims to the trusts. Sometimes we hear here and elsewhere that, to recover from a trust, the claimant only has to say that they were at a site where the product was. The Babcock & Wilcox trust claim form is often held up as an example of that. And exposure affidavits like these show that the claimants sometimes in making their trust claims make admissions that would have been valuable to Garlock had it remained in the tort system and are also relevant to its legal liability.

We think that these attachments are part of the trust claim form. They are clearly discoverable. Mr. Simon testified that affidavits of exposure like this have to be disclosed in discovery as a matter of course. The location of this testimony was the February 17, 2011, transcript at pages

144 to 146.

He was asked:

"And that would be discoverable pretrial?" Referring to the affidavits of exposure. And Mr. Simon said, "Sure, because it is part of that set of exposures that the plaintiff apparently knew about and needs to have disclosed through discovery."

So we think the clarification that the trust claim form includes materials like this is a clarification that is included within the court's ruling on May 12 and should be part of the questionnaire. Although, like I said, we are not interested in obtaining the medical information.

The second area of dispute on the questionnaire is the authorization and, like I said, we had substantial input from the committee on this and, again, this is not something that claimants are required to execute. It is something that, if they want to avoid the burden of attaching the trust claim forms, they execute this and the debtors can obtain them from the trust.

We accepted detailed language providing that this authorization is limited and only permits Garlock and no one else to obtain these materials. Those are all additions that the committee made.

The one area of dispute is the expiration date of the authorization, and the last version of the committee's

questionnaire that we saw said that the authorization would expire on October 24, 2011. Now, that is problematic because October 24 is, as I will discuss in more detail, the expected return date of the questionnaire. So what the committee wanted was essentially an authorization that is going to expire the moment the debtors get it. They wouldn't have the opportunity to actually use it to obtain the materials. So that is not a very helpful suggestion.

What the debtors had in our version was that the authorization would expire on the effective date of any plan of reorganization in the bankruptcy cases. Now, you could say another option would be to say it would expire at the end of any estimation trial that occurs in these cases. That's another potential way to do it because that would give the debtors enough time obviously to go and get the trust claims from the trust.

We think the effective date is a little better because it's not completely predictable what is going to happen in the cases and what litigation will occur, and we think it makes sense that once the claimant has executed the authorization that it remains good for the entire period of the case and that there is no reason, if things take a different course, for debtors or anyone else to have to resolicit the authorization. The authorizations obviously would only be used for the limited purpose contained in the authorization, which prevents any sort

of use of it for any purpose not related to these cases. And the court would, of course, remain cognizant and aware of what purposes these authorizations are being used for. So we think that is the appropriate expiration date, if there is one. And, like I said, the October 24 date is just a nonstarter because that would nullify the effect of the authorization.

I think that wraps up the areas of the questionnaire. We, as Mr. Cassada said, worked hard to try to minimize the disputes that we would bring to the court and that is what we have been able to do.

The next matter is the form of the order issuing the questionnaire, and I will pass out the debtor's current version of that order, GST 158. I guess I will just describe sort of the mechanics of it and how the debtors' version goes and I can hit on the points of disagreement as I go through it.

I don't think there is any dispute on the preamble, which just recites what has happened in the case related to the questionnaire. Then our version has a brief statement of jurisdiction.

The committee's version wants to say that the questionnaire is being authorized under Rule 9014. Our version does not have that and let me explain why.

9014, of course, is the rule applying the various rules of civil procedure to contested matters, and the debtor's original motion was under Rule 2004, as the court knows. Now

the rule 9014, we don't think that there is any rule in there that really describes what we are doing with the questionnaire. The questionnaire is not, you know, a standard method of discovery that is covered by the federal rules, and that's why the debtors originally sought to issue the Rule 2004.

The conceivable rule that might apply is the subpoena rule that is also incorporated by the Bankruptcy Rules. As the committee said many times, the mesothelioma claimants are currently third parties to the cases and that would seem to be the natural rule but, of course, we are not proceeding under that rule either because that presents potential procedural obstacles that I don't think the court wants to get involved with.

So the way we view the questionnaire is that it is something that the court is either issuing under Rule 2004 or under its inherent powers to administer the case and that there is not anything in Rule 9014 that applies and describes exactly what the court is doing. So that is why that is not in our order.

We next provided the questionnaire which, of course, will be the final form of it. It is attached as Exhibit "A" and is incorporated and approved.

Then I see my paragraph numbers are incorrect but, in what appears on this as paragraph three, this is the definition of who is required to answer the questionnaire. And what we

did here is we just drew out from the version of the questionnaire that everyone has been working with the definition of who has to answer it and that definition is every person who has a pending lawsuit against Garlock or Anchor. In other words, if they sued on or before June 5, 2010, and alleges that such person or another individual contracted mesothelioma as a result of use of and/or exposure to an asbestos containing product manufactured and/or sold and/or placed into the stream of commerce by Garlock or Anchor.

Again, that is just drawn directly from the version of the questionnaire that the court and the parties have been working with over the past few months, and I don't think anyone has objected to that definition, at least not in the recent past.

Now the disagreement that leads to is that that definition includes anyone who had a pending lawsuit on June 5 and who alleges in that lawsuit that they have mesothelioma and that one of the debtors caused it. As the court may recall from the fall testimony, there are certain people who fall in that category who are known to Garlock. Their complaint said I have mesothelioma, Garlock or Anchor caused it, and I am suing you, and people like that got entered into the Garlock database as mesothelioma claims, and so Garlock knows that those individuals have alleged mesothelioma and can easily serve copies of the questionnaires on those people and tell

them that they are required to answer it.

There is another group of claimants which the court may recall. There are approximately 30,000 in number who sued Garlock or Anchor, had pending cases as of June 5 and are unknown. Their complaints or whatever they used to initiate the suit didn't contain what their alleged disease is.

Now, it is likely that most of those are nonmalignant claimants but, as the experts testified back in the fall, there is likely some number who are cancer claimants and some smaller number of those who are mesothelioma claimants, and those would fall within the definition.

The experts will be making, in the absence of knowing who those people are, the experts can extrapolate who they are and say, well, you know, there is a certain number of unknowns either for this debtor or for the Manville trust or for someone else who, if they are unknown, turn into mesothelioma claimants once you find out what their disease is. But the problem is, even though you can extrapolate that, if you don't have questionnaires from them, you don't know what the characteristics of those individuals are, nor do you have certainty regarding what the actual numbers are. And we think that there is an easy way to require those individuals to answer the questionnaire and to come forward and say, yes, I am a mesothelioma claimant and also here are the characteristics of my claim. And here is what we propose:

First of all, the easy part in what appears as 4(a) in our order provides that on or before June 24, 2011 - that is a number that we got with the help of Rust. They tell us that, whenever the court enters an order, within about three weeks from then, they can have the paper, service packages and the electronic system up and running. So that is where we got that number.

4(a) provides that the debtors will serve the questionnaire on counsel of record for all plaintiffs, party to complaints containing allegations that such plaintiffs are mesothelioma claimants. Those are the known and that is, like I said, easy to do from the database. We have already done that and determined who those individuals are.

Then part 4(b) deals with the unknown, and what we have proposed is that the debtors would serve a notice on counsel for the thirty thousand and it wouldn't be anything extensive. It would be a notice enclosing a copy of this order and a single copy of the questionnaire, as well as probably a cover letter, and would tell those counsel that, if you have any mesothelioma claimants among the individuals listed in this letter, and we will list the unknowns that in the Garlock database are associated with that counsel, if any of those are mesothelioma claimants, here is the questionnaire, they need to answer it.

That process would not be very difficult. There are,

I believe, around seven hundred counsel, total, who are recorded in the Garlock database, and it could be even fewer than that depending on what firms brought the unknown claims. It is likely fewer than that, but it would be a short package to those seven hundred, or fewer, counsel telling them here is a questionnaire, any mesothelioma claimants need to answer it.

THE COURT: And you know the names of the claimants; you just don't know their disease?

MR. WORF: That's correct, and we would attach to that letter to counsel a list of the claimants that we have.

THE COURT: So you will identify who you are talking about?

MR. WORF: That's right, and we would say here is your list, here are our records and just take a look. No one counsel would have thirty thousand. It would be fewer than that for each counsel.

So that, we would do, and we think that is a cost-effective and simple way to figure out who among the unknowns are mesothelioma claimants and then figure out what their characteristics are, and we think that's a cost-effective and helpful exercise and also falls within the definition of mesothelioma claimants that everyone has been working with.

Another feature that we have incorporated and we haven't had a real chance to discuss with the committee, but was absent from their latest draft that I wanted to explain to

the court, is that we have discussed with Rust the process of answering the questionnaire in paper and what would make it easiest on them and on the debtors and the estate to process the paper forms without increasing any burden on the plaintiffs, and here is what we came up with, and I will pass this out. It is GST 156.

(Pause)

This is an older – the substance of this is an older version of the questionnaire. We are not introducing this for the text but rather for the format. And what Rust says is that it really makes it easy on us if the claimants who answer in paper do so on a form that has a bar code linked to them. So that when it comes in, we scan it in, we know it is associated with that claimant and there we go. That prevents having to do a manual review and a manual linkup of claimants with their paper forms.

And so you will see that there is a bar code on the first page and also on the subsequent pages that is unique to that claimant and links it up to that claimant.

They have also done some formatting things, spacing it out so that there is plenty of space to answer the questions in the paper form for any claimants that you need to do that, which I don't think anyone would have any problem with.

And so what we would do is that, for the known claimants, Rust would mail to their counsel an individual copy

of this claim form with a unique bar code for everyone in our records that have a known mesothelioma claim, and this order provides that they will be required to answer it on this form so that we have that time and cost savings. It would be no problem for the claimant because Rust would provide this copy to them.

We think that makes a lot of sense and it is just easier for everyone concerned and it would save the estate some money.

For the unknowns, what we would do is we would not send an individual one for all of the thirty thousand or so unknowns because that just wouldn't make sense because most are not mesothelioma claimants. Instead we would send just a sample form to their counsel and request, if they want to answer in paper, just give Rust a call or send them an e-mail and they will send the form to them. Or if for some reason they chose not to do that, the number of those would be relatively small compared to the knowns and would not be a real burden to manually link up.

Moving on, 4(d), we have a return date of October 24, 2011. That’s keyed off the June 24 service date, and that’s a number we got from the committee. According to them, a hundred and twenty days is about what the claimants need to answer the form. So that’s what we put.

We have the option to answer in paper or

electronically. Rust has started on the electronic system and, as soon as the final questionnaire is done, they can finish it in a relatively short period of time.

Then we provided that Rust will make the questionnaire responses and attachments available to the parties who have been in here, the debtors, the official committee of asbestos personal injury claimants, the FCR, the equity holder, and the bankruptcy administrator. I am sure we could add the trade creditors if they want to be added, and we also provide that, in the event there is some other person who needs access, they can move the court for access after providing notice to the affected mesothelioma claimants by their counsel and also the various other parties.

We have a requirement that Rust create a database of the information. We thought that one way to save cost would be to have the debtors, namely Garrison, doing the manual inputting of the paper forms. That is a mechanical process and we didn't think anyone would have an objection to that and thought it would be a good use of Garrison. So we have that in there, too.

Then we have an objections procedure. Of course, Exhibit 2 to the questionnaire is the form for making objections and the order provides that claimants have to make their objections there and cannot do so by attachments which would be ambiguous.

And then it provides that the consequences for failure to complete and timely submit the questionnaire and any required attachments remain to be determined, which I believe is a correct statement of where things stand and what we have heard the court's thinking on that issue, and that leaves it open for everyone to argue what those consequences should be if and when anyone fails to return the questionnaire.

The rest of the order – the rest of the substantive parts of the order deal with confidentiality, and this is the other large area of disagreement between the committee and debtors.

What we heard the court say on, I believe April 28 at page 188 to 189, was that the debtors' objections to confidentiality were overruled and the committee's suggestion that the questionnaires and their responses should be subject to the stipulated protective order among all of the existing parties and that they would be automatically subject to that and that they would be used for the purposes of estimation but that someone could make a motion to the court if it became necessary to use them for some other purpose in the cases. So that is what we tried to capture in the order starting in what is labeled as paragraph six.

It provides that the responses to the questionnaire, both the information and the documents, are treated as having been designated confidential information within the meaning of

the stipulated protective order already entered in the bankruptcy cases. I have a copy of that order that I can pass around.

So what that means is, if you look at paragraph – actually it is section four of the stipulated protective order, this governs the designation of confidential information and it provides that the parties to the stipulation may designate as confidential information material produced in discovery by stamping confidential on each page.

Under our order, the mesothelioma claimants are getting better treatment than this because we are going to treat everything as automatically designated confidential information within the meaning of this stipulated protective order. So they wouldn't have to stamp anything. It would just be treated as that automatically. So they won't have to go through the obligation that parties to this order have of determining whether in good faith the material actually is confidential. It would just be treated as that and we would go from there.

Now the consequences of that treatment and that designation are not that it is automatically confidential forever and all time because, in the stipulated protective order, there is, in section five, a provision that allows for any party to challenge, if they want, the designation as confidential. And even with the questionnaire responses

designated as confidential, someone could come and do that for a particular part of the questionnaire that they didn't think was confidential and needed to disclose to somebody for some purpose.

The committee's version of the order doesn't have that out. It treats everything as confidential forever and all time. It essentially puts it in a box and says confidential forever, and we don't think that is appropriate and we think that really hurts or potentially hurts the debtors who have an interest in potentially sharing certain parts of the questionnaire responses with other parties who can provide information and that certain parts of the questionnaire are virtually indisputably not confidential.

Just to reference a few, the information on the claimant's occupation and industry, the information on their exposure to a Garlock product, those are not even arguably confidential and, like I said, they would be designated as confidential under our order but there would be the opportunity for argument and findings from the court regarding whether those parts actually are confidential. We don't think they are. The committee may argue otherwise, but there hasn't been any findings on that or an extended debate on it, and we think that, at least putting that off, is the best approach for now so that we can get the questionnaire issued and not be held up by a dispute like that.

Now why would the debtors want to tell someone else that this claimant is saying that they were exposed to Garlock at this site? Well, these claimants have all sued many other defendants and those defendants are finding out things about what the claimants are saying about Garlock and about other products and the debtors have an interest in potentially comparing what is said in this questionnaire to what is said out in the tort system. That is not an illegitimate goal. That is ensuring the consistency in the best sense of the word, and that is just an example of the kind of thing that would not be possible under the committee's black box approach where these questionnaires are put in a black box and sealed for all time.

Again, we think that this approach is consistent with the court's ruling on April 28 where the Court indicated that this information should be subject to the stipulated protective order.

This stipulated protective order, of course, is what has governed the debtors' discovery and the sensitive documents that they have produced to the committee and the FCR and, you know, we think it's really only fair that the debtors' discovery that they are obtaining from the mesothelioma claimants is subject to the same rules, which is all that the debtors' order does, and there is no reason to have different rules for different parties.

Alternatively another way for the court to proceed would be to issue the questionnaire under the stipulated protective order and then, before the questionnaire responses come in, have a hearing on what parts of the questionnaire should be confidential and what parts should not for all time. And then the parties could put on evidence about what parts are confidential and what parts are not, and the court can get that squared away even before the responses come in, but we don't think the issuance of the questionnaire should be delayed by those disputes.

The other part of the court's ruling on the 28th was the uses of the information and the court ruled that it should be used for estimation, and we embodied that in what is listed as paragraph twelve of the debtors' exhibit.

Section six of the stipulated protective order has a fairly broad use restriction. It basically allows the parties to the stipulated protective order to use the confidential information for any purpose they want in the cases. That is a simplification of it but that is basically what it says, and those are the terms under which the debtors' sensitive documents have been produced to the committee and the FCR.

We are giving the claimants better treatment under paragraph twelve here than the debtors got under the stipulated protective order because we limited it to section six and limited the use of the confidential questionnaire information

to the purposes of formulating a plan of reorganization in these bankruptcy cases and for the purpose of any estimation of asbestos claims that occurs in these bankruptcy cases.

Estimation was part of the court's ruling. We put in the purposes of formulating a plan of reorganization because we view the questionnaires as directed to that, as well as helping the debtors with formulating a plan of reorganization and proposing an appropriate plan. So we put that in there, too, but that can be struck if the court would like.

And then it provides that a party may use the confidential questionnaire information for any other purpose only pursuant to a court order after motion and notice to counsel for mesothelioma claimants affected. That's another part of the court's April 28 ruling where the court said that, if some other use became necessary, a party could make a motion and get an order to that effect.

The committee's version of the order doesn't contain that and so we thought it was inconsistent with the court's ruling. It provides that the information is strictly only to be used for estimation for all time, again putting it in a black box that has estimation on the cover of it, and we don't think that is either appropriate or consistent with the court's order.

So those are basically the differences as they stand now. There may be some details that are different, but I think

those are the material ones, and we think the debtors' order embodies the court's rulings, it provides a workable and efficient way to get the information that the debtors need. And for those reasons, we respectfully ask that it be entered.

Thank you.

THE COURT: Mr. Swett.

MR. SWETT: Good morning, Your Honor. I have a lot of materials to work with and it may take some shuffling but, first, I would like to try and encapsulate the areas that I think we need to focus in on.

First, Your Honor, though, I have to voice a complaint. We provided a form of order for authorizing the questionnaire and blessing the form of it subject, of course, to the eventual individual objection process, on April 22, six days before the April 28 hearing. We got no response to that until two days ago while we were busily preparing the questionnaire and trying to narrow the issues in terms of the scope and contents of the questionnaire form itself and with little time to deal with what are perhaps subtle but absolutely drastic changes, not only in the form of order but in the concept of the questionnaire exercise.

They, in fact, cast into question the viability of the questionnaire project if they are allowed to be glommed onto the process as it existed as we emerged from the last hearing for reasons that I will explain.

So I think the court really has two alternatives. One is to invite briefing on the order before commissioning the debtors to go ahead and serve out their questionnaire and take evidence on the disputed points. And the other is to recognize today that what the debtor has done is at the last minute substituted some cards into the deck that fundamentally changed the hand and to rule that that is really not appropriate and that, if they want to bring issues pertaining to, for example, the unknown claims, unknown disease claims, we will have to address that in a different process because it fundamentally subverts the efficiency and the ability of the court and the parties to march forward now with the questionnaire within the scope previously contemplated.

And there are two such issues subtly embodied in the order. They are perhaps the two most important things to talk about today, although there are some others that are not unimportant.

One is the scope of the mesothelioma claimants to whom the debtors would send the form. As we will see in a moment when we turn to the details, the debtor has engaged in a unilateral, self-help process of throwing claims out of its database without a basis in the judicial system or in the claimant's consent, and now it proposes to send the form only to those that survive that unilateral self-help, winnowing out of claims. At the very least, that threatens a significant

manipulation of the estimation process. We don't get, no, we haven't had discovery of it, we haven't had detailed discussion of exactly what they have done to the database, but we know that they have materially reduced the number of claims that they recognize as pending for mesothelioma. Mr. Clodfelter at the last hearing said something about how this winnowing process had caused him to believe now that, instead of fifty-five hundred prepetition mesothelioma claims they were talking about last fall in the bar date hearing, now they think it's less than four thousand, a very material discount, if you will, by their own say-so of the base, the cohort from which the estimation will proceed.

That is an unheard of manipulation of the data and really can't be tolerated. Certainly I am going to urge you most vigorously that you can't permit them not to notice people who, when the bell sounded on their bankruptcy case, they had recognized as claimants for mesothelioma prepetition. That would be a big thumb on the scale, and it is grossly inappropriate for them to slip in that procedure at the eleventh hour in a purported response to an order that contemplated the same process and the same scope of distribution that they had been talking about from the beginning. And I think it is worth parsing through their papers, which I will in a minute, to demonstrate that that represents a significant and unacceptable shift on their part

with regard to the concept behind this questionnaire project.

And the second has to do with this notion that they are going to kind of canvas the claims in their database that are not reflected in their database with an identified disease through a process that they characterize as easy on themselves without much regard for the burdens on the constituency and which represents a drastic increase in the scope of the data gathering exercise. Again, one that at this late hour it seems to me is intolerable in this process and will cause delay that I am frankly not able to measure precisely but I know it would be material.

And here is the point there and the gist that we will come back to in more detail on later. There are thirty-three thousand claims in the database that are reflected without an identified disease. That doesn't mean they don't have information pointing to the disease. They may or they may not. It is not uncommon in these databases, as previous estimations have shown, for there to be a significant number of claims in the debtor's data that for legitimate reasons they can't associate with a specific disease allegation. But there are also factors of inertia, a desire to save money for themselves and inflict the cost on the outside world and things like that that cause them not to mine their existing resources to identify the diseases within the resources that they have.

For example, they may have received a complaint that

simply alleges asbestos related disease. That is quite common. Most courts do not require identification of disease in the complaint. But then they maybe serve interrogatories and they get responses but they don't update the database to reflect them or they take a deposition and elicit the disease diagnosis or they engage in discussions with the plaintiff's firms and those things somehow don't get reflected in their data.

It's impossible to know in the abstract how many of the thirty-three thousand claims in their database not associated with a disease are in fact known to them to have a disease. But it is ironic to me that in their form they have an instruction that says, well, the claimants may respond to this. If they respond through documents, they must ensure that the documents speak currently as of the submission date. That's part of the certification. And they have to take account, according to them, of whatever information about that claimant the lawyer has obtained since the documents that he is providing as the substance of the response were created, and they would put that burden in effect of supplementation on the claimant's back, but they undertake no exercise themselves to mine their existing resources to identify diseases where that information is within their reach. Instead, they would send a letter to thirty-three thousand people. Oh, this is Garlock. The court has ordered mesothelioma claimants can be canvassed with this questionnaire. You better check all of your clients

to make sure whether or not they have claims against Garlock and, if so, whether they have mesothelioma on pain of some sort of ominous sounding but not spelled out threat of preclusion or other prejudice. Thirty-three thousand claims in their database.

This is not a new problem. This problem has existed in every estimation of asbestos liability that's ever been done, and Charles Bates is fully versed in it, and it has never given rise to a data-gathering project like this as an incident of where it kind of bolted onto a questionnaire to identify claimants.

Instead, the experts engage in statistical extrapolation. Mesothelioma is a rare disease, devastating but rare. That means that the experts using data, public data from past cases and interpretation of the changes over time of the claims in the debtor's own database that may start out as unidentified but progress through a litigation process to the point where they do update their database and now it's reflected as mesothelioma, those things can be analyzed statistically and you can extrapolate with reasonable reliability what fraction, what small percentage of those thirty-three thousand are going to be reliably extrapolated to be mesothelioma claimants.

It is efficient. It is a procedure that all of the experts understand and apply all the time, and it does not

involve disturbing thirty-three thousand cases out there in the world that are stayed by the bankruptcy stay for the debtor's convenience at the last moment of this elaborate questionnaire process.

As I am going to emphasize further, allowing that subtle but drastic change to be glommed onto this questionnaire at this process will imperil the exercise from the standpoint of being able to bring it home and allow the experts to use the data and get on with an estimation within any reasonable period of time.

You heard, and it is true, that after canvassing the people on our committee, we believe that a hundred and twenty days would be required for the identified mesothelioma claimants to respond in robust fashion to the questionnaire. That's longer than we would like because it will take Rust a month to get the form up and, when you add four months to that, you are in late October before you even have the responses. That means, as a practical matter, there is no way that we are going to reach an estimation trial until sometime of like now or later next year, and this is supposed to be an efficient direct and relatively inexpensive process. That is part of the whole virtue of estimating rather than having individual claims litigation, but their endless appetite for more and more data demands upon the constituency makes that unachievable if it is indulged.

So we have got to find some practical expedient. The claims of unknown disease are a problem that's been staring them and every other defendant in the face for years and, for them to slip this in at the last minute, is really quite beyond the pale.

Mission creep is what all of the changes and disputed points we will be talking about today is all about. Garlock is unhappy to be in an estimation rather than allowance mode. It is unhappy with the court's rulings on various of its discovery overreaching forays, and it expresses that frustration through continual efforts to push the envelope in a process that should now be a simple matter of identifying our narrow disagreements over fully vetted issues already fleshed out and getting on with it because, Lord knows, it is going to take enough time already.

So the unknown claims is a big, big, big issue, and I am going to urge that either you cut that out of this and just not deal with it now and send the parties off to figure out what to do, separate and apart from the questionnaire going out to identified mesothelioma claimants, or that you simply scotch it as inconsistent with the whole idea of aggregate estimation, which necessarily involves a degree of statistical extrapolation. No matter how merits oriented they want to make it, the experts are going to have to apply their statistical expertise to draw inferences, and this is an area where they can

certainly do that without any prejudice to the debtors.

The use restrictions and confidentiality requirements are drastically different in their order than the one we presented more than a month ago. As we explained at that time, those use restrictions and confidentiality restrictions grew out of a stipulated order in the *Motors Liquidation* case where Charles Bates, his firm was also the expert and where they had no problem agreeing to those provisions. They were suggested precisely because evidence had emerged, as we have detailed to the court on another occasion, that the Bates White firm has commercial interests in the exploitation of data that it would love to get its hands on for reasons unrelated to the case. To make that policeable, you have to have a fairly detailed regimen regarding how it manages the electronic data and what it is and isn't entitled to do by way of preserving weight, data sets that merge in effect the data gathered here with data gathered in other cases, and less regulated by the court, would be available to Bates White or others in some other case or context not contemplated here and that is a very, very significant issue for the reasons that I have explained previously in elaborating on Bates White's association with the Litigation Resolution Group.

And Your Honor, upon first considering the provisions that we borrowed from the MLC order, commented that they seemed reasonable. Although in fairness, I must acknowledge the

debtors hadn't at that point responded in substance to those. So I am not suggesting that this ought to be treated as a closed issue. I am suggesting that the difference between the orders is significant, that there are material issues involving the legitimate rights of the claimants and the administrability of this process that counsel adopting the protective provisions from the MLC order, which will bear a close reading.

There are other issues pertaining to the order which I will get to, Judge, when we go over a red line that compares their version to ours but first to touch on the questionnaire form.

The issues are indeed narrow. I am not sure that I have caught up with – I think I know I have not caught up with whatever changes in the debtors' form have been made since yesterday, but a cursory review suggests that we are down to some fairly short strokes with one huge exception.

Before going to the huge exception, I would like to point out an issue that requires clarification in one of the details of their form.

Your Honor, if you will turn to 5(a) of GST 159, the instructions.

THE COURT: Do you have a page number?

MR. SWETT: Page six, at the very top.

THE COURT: All right. I am there now.

MR. SWETT: The instructions say, "Complete for every

site" - this is the place to identify exposure information pertaining to Garlock products. It says, "Complete for every site where claimant alleges exposure to Garlock or Anchor product. In the case of secondary exposure, list information for the site where primary exposure occurred and the occupationally exposed person's exposure."

That doesn't strike me as understandable. The basic distinction between secondary and primary exposure is well understood in asbestos litigation and is not the problem. The problem is the tag line, "and the occupationally exposed person's exposure."

A bystander in the workplace has occupational exposure to asbestos fibers released in the air by operations carried out by other workers on the scene. If I am such a person - or another kind of secondary exposure is a family member is exposed to asbestos fibers on the work clothes of the worker who brings them home, and there are not an inconsiderable number of household exposure mesothelioma cases.

So what causes the confusion, presumably the person with secondary exposure is being asked here to identify where the primary exposure took place because that's where Garlock's product might be, but the way this is written, as we tried to point out in the exchange of drafts, is confusing and will introduce questions and ambiguities that will trouble responses.

So I am urging the debtor to clean that up and, if I have misunderstood their intention, well, I am sure that people out there in the world who get the form would also misunderstand. So it bears clarification.

MR. WORF: Do you want me to respond to that real quick?

MR. SWETT: Sure.

MR. WORF: We don't have strong feelings about this, and we can certainly make it clearer. The point is that's not intended to capture bystanders. If you look at the boxes down below, there is bystander, which would be a person who was at a site and Garlock products were allegedly around it and then secondary, which our understanding of the traditional meaning of that was the take-home exposure where a person's husband is exposed to asbestos at the work site and then brings it home.

So these questions about the occupational exposure in that scenario would only apply to the husband or wife who was in the workplace, and that's where the question would be directed to, to determine how they encountered the Garlock product because the only way for the secondary person who encountered a Garlock product is through the primary person. So the primary person's exposure is what you need to know about.

MR. SWETT: Let's just agree that we will sharpen that.

MR. WORF: We can sharpen that.

MR. SWETT: Fix that problem.

THE COURT: Okay. It looks to me like it needs some work.

MR. SWETT: Okay. Now, the big issue involving the questionnaire form flows out of your openness at the last hearing to the idea that the claimant should attach their trust claim forms to their response and the mission creep in the debtors' form of order that purports to implement that ruling but in fact imports a very, very significant loss on it that will have very material and practical consequences for the response process.

Let's go back to the first premises. The 5(b) and 6(b) portions of the form respectively call for plaintiffs to identify – have to do with third-party – other defendants, trusts or stand-ins for a subset of other defendants, the insolvent ones, and the concept behind the form as it has taken shape is that the claimant will identify sites where claimant believes he or she was exposed to asbestos other than Garlock's and describe the activities that caused that person to come into contact with that asbestos and the debtor will then go to work on that with its experts to make whatever inferences it wants regarding the offsets it would be entitled to or the recoveries the claimant would receive from other sources so that it can make arguments about what impacts that those other recoveries would be on its future settlement values. That's

what that is all about. And that roughly replicates the process that in fact, as a practical matter, defendants follow in the tort system when they are gauging their exposure to damages and their chances of coming out of a scrape with an asbestos litigant unscathed or what the chances a very large judgment might be.

Now, coming into the last hearing, they basically said, well, gee, give us the trust forms, too. There wasn't a strong rationale, at least one that sticks in my mind, for making that departure from the fundamental premise of the form as it had thus evolved, which treats the trusts unaccountably as drafted completely different than the solvent defendants. Whereas, in fact, the trusts are just defendants who went bust.

What is the debtor going to get from the trust claim forms? Well, you said what you said about that and we go on. We go on to a revised form from the debtor that says, oh, not just the trust claim forms but all of the submissions made to the trusts to make out the exposure requirements in the trust TDP, and we are given an example today of a two-page form affidavit as though that were illustrative of the general run of the mill of trust submissions without evidence in fact that it is.

But we know from the trust forms themselves, some of which are in the record, and one of which I will hand up now as ACC Exhibit 104.

(Pause)

We know from these forms that there are a variety of means by which plaintiffs can meet the exposure requirements of trusts, and we know from our previous discussion and evidence of what the TDPs call for, that in the case of mesothelioma what is required is a showing satisfactory to the trust that the claimant had meaningful exposure to the trust predecessor's asbestos products, a standard that is in some respects different than the proof that the plaintiff would be required to put on in a tort suit.

But we know, as we can see from the trust materials, for instance on page seven of ACC 104, that there are a variety of means acceptable to trusts for making out that showing such as it is. They are not all one-page affidavits, the details of which I will get to, but they also include, for example, such bulky documents as depositions, affidavits, invoices, answers to interrogatories which in the tort system tend to be quite lengthy, deposition transcripts and other. Verified listings of job sites, which is one that is relevant to the affidavit that the debtor has put in as GST 137(a).

Turning to that affidavit, what we see is that this claimant, David Puller, affirms that he worked as a boiler technician. In the questionnaire form, presumably a person in this position, when describing the activities that brought him into contact with third-party asbestos would say boiler

technician. That as part of such work the decedent was exposed to asbestos containing materials and breathed air-containing particles of dust arising from such materials, and then giving the years, which is information elicited by the questionnaire. And then that the decedent worked at the following locations where this particular trust predecessor products were on the scene.

Now, in those instances where this kind of evidence is what is elicited if the claimants are required to attach their evidentiary submissions to trusts, what is the debtor going to get out of this? The guy was a boiler technician. He was exposed to asbestos in a certain span of years and he was present at a site where there was National Gypsum product. Exactly what they are going to get out of the form, the questionnaire form itself. It adds nothing.

But consider the situation of the law firm that represents Mr. Puller. Supposing it is one of the law firms that has hundreds and hundreds of mesothelioma claimants. Supposing that each of those mesothelioma – that on average those mesothelioma claimants have claims against multiple trusts. Suddenly you have magnified the burden on the law firm of responding to the questionnaire quite materially.

I mentioned earlier the hundred and twenty day period that we believe is going to be required for identified mesothelioma claimants to complete the form reliably. I have

it from one of the firms that has a very large volume of mesothelioma claimants that, if they are required to attach trust claim forms, too, let alone the evidentiary submissions on top of them, they won't be able to do it in that period of time because there are too many and because, as I should have mentioned earlier, these firms will be required to respond to the Bondex form more or less at the same time as the Garlock form, so the burden is roughly double except that the Garlock form as it emerges is the more burdensome one. So what is the point of this mission creep?

Supposing further that Mr. Puller is not typical, that the one-page affidavit is not the usual way of meeting the trust exposure requirements. I don't know. All I know is that there are other means and that the materials of doing so are often, according to the trust claim form, can be voluminous materials. What is the debtor going to do? Put itself in the position of being the administrator of every trust out there and make merits determinations about whether or not this particular claim gets paid? That is a fool's errand. It will not add significant value to the estimation even under their theory.

And the fact that they are not satisfied just with the form but they want the evidentiary submissions, when no evidentiary submissions are to be made with respect to Garlock or third party defendants who are not bankrupt, it doesn't make

any sense. It is at war with the other concepts behind the form and it imperils the efficiency of the process.

So at the very least, it seems to me the court ought to excise the debtor's efforts to glom onto the evidentiary submissions of the trusts. I do believe it is worth re-thinking the opening that you gave them at the last hearing to elicit the trust claim forms themselves unless a particular claimant chooses to include such forms in the document set if he is responding through documents instead of providing narrative responses to the questions. I have no problem with that being an option, but the expansive request as it emerges from the debtor's revision is very troublesome and it calls into question, I think, the wisdom of the idea of opening the door on trust claims as a mandatory feature of the response at all.

And no matter how this comes out today, Your Honor, I would implore the court to - if it goes forward in anything like what the debtor has proposed, you must anticipate objections from the field and those objections need to be heard with an open mind and an empathetic perspective on the problems and burdens of the respondents, as I am sure Your Honor would accord them.

But the better part of wisdom, it seems to me, would be to deal with this today and to cut it back appropriately. Again, largely for the reason of trying to preserve the ability

of this process to come to fruition in responses within an acceptable period of time.

On that subject, the authorization form, which of course should conform to however you come out on the underlying question of what trust material, if any, is to be required, highlights a very significant practical problem because it's true, we had put in – we don't like the idea of an open-ended authorization. We don't think claimants would accept that. We don't like the idea of an authorization that lives as long as the case because who knows how long that's going to be and how would a trust know when Garlock shows up with the authorization without exerting affirmative efforts on its own part whether that cut-off had become operative, and so it would put the trust in a peculiar position.

So we said, well, let's make it the response time. That was, in fact, an ill-considered suggestion. Mr. Worf is right. It doesn't work. We retract it. But there has to be a cut-off if there are going to be those authorizations, and the sensible one in the alternative would be the discovery cut-off, whatever Your Honor ultimately rules when we get together on a scheduling order and present one or two competing ones to the court for ruling.

But if the court agrees with me that the detour into trust claim forms let alone the supporting exposure evidence is imprudent, improvident and that we should walk back from that,

then the authorization form falls out, becomes of no relevance and presumably can be taken away. So it would be simplified.

So my basic pitch is to treat the trusts like the other solvent defendants and let's get on with it.

Now, I would like to come back to the question of who is to receive this form but, first, I will hand up two documents. Excuse me just a minute. First is a red line of the form against what we have as the debtors' last version, Exhibit 105. I would like to point out that the highlighted and bracketed language on page two at part eight and the editing in the authorization and the editing in the part eight instructions on page fourteen. Again, they are highlighted and bracketed. The highlighting and bracketing means we were flagging this issue for debate today. The inclusion of that language in the brackets and highlighting is not, of course, a sign that we agree with it. In fact, as I have just argued, we certainly do not. So I just wanted to clarify that for the record.

So this represents the state of the discussion with the debtors as it existed on yesterday's forms and they have accepted a couple of the points that are reflected in here, for which we thank them, and the main issue as reflected is the one about the evidentiary submissions and trust forms that I have just been through.

Now I would like to hand up Exhibit 106, which is an

update of the committee's version of the order that we put in on April 22nd to take account of some suggestions reflected in the debtors' version, and I am also going to hand up as 107 a red line against the debtors' last version of the order.

I apologize for the awkward format of this red line. I couldn't get the machine, when I was working on this last night, to give me a simple red line. Instead it insisted on having this field on the right-hand side and all of these arrows and things. It makes it a little bit harder to deal with, but I did the best I could. So that is 107.

Now, I would like to first go back to the issue of who is going to be sent the questionnaire by the debtors and their form has an anomaly which is the tip of an iceberg. GST 158 says in its paragraph number three:

> "Every person who has a pending lawsuit against Garlock or Anchor and alleges that such person or another individual contracted mesothelioma as a result of," and it goes on to describe exposure to Garlock product, "is required to complete the questionnaire."

A more appropriate decree at the outset is that the debtors are authorized to issue the questionnaire. Their application was for authority to issue the questionnaire and you ruled that, while you would issue an order on the form, it would be subject to the right of remote parties once served with it to come in and propound particular objections. So, in

fact, it's a misstatement to say that you are requiring them to make a complete response. That is in derogation of the objection rights. That's a technical point. But here is the main point:

Whereas this paragraph says every mesothelioma claimant must respond, paragraph 4(a) says that the debtors are going to provide the questionnaire to significantly fewer than all persons who have alleged mesothelioma and pending lawsuits. Instead they are going to send it to people whose complaints flag mesothelioma before the petition date, not only limiting that source of – limiting it to that source of information but further limiting it to as reflected in the version of the debtors' claim database produced in discovery on May 18, 2011. What is that?

Well, that is the vulgarized, expurgated, revised, updated, litigation oriented version of the database that has been created now for the special purposes of the estimation context, not the prepetition database that Dr. Bates used in reporting to the financial markets on Garlock's behalf or rather advising him with regard to the disclosures that it must make to the financial markets, not what the claims managers at Garrison used to manage the mass tort problem before they fled into bankruptcy but something new and different which, as I mentioned earlier, has some materially fewer mesothelioma claimants reflected in it because, as Mr. Clodfelter put it the

last time, the debtor has decided in its wisdom that some of those are merely records in the database rather than claims.

Well, that is a – it's a naked manipulation of the estimation process as I explained before and it shouldn't be permitted. The questionnaire should go to everyone who before the petition date had alleged mesothelioma, be it in the complaint or in the other information provided to the debtors. And certainly it must be not inconsistent in terms of inclusiveness with the prepetition database. It can't be an edited expurgated version.

Now, I would like to demonstrate briefly that this subtle idea worked into 4(a) represents in fact a drastic departure from the concept that we have all been discussing since January when this motion was made.

First of all, as recently as May 11th, the day before the last hearing, the debtors filed their statement regarding that conference, which is document 1330 on the docket. And in that document, they expressed the following intention and I am quoting:

> "The personal injury questionnaire shall be served on counsel of record for all plaintiffs in personal injury actions pending against any debtor by mesothelioma claimants as of the June 5, 2011, petition date."

All mesothelioma claimants.

Your Honor, if you go back and read the Rule 2004 questionnaire application, which is document 1006 filed last January, it says on page three:

"Through the motion, the debtors seek an order requiring persons known to have asserted as of the petition date an asbestos personal injury claim against the debtors based on an alleged diagnosis of mesothelioma to provide information sought by the questionnaire. There are approximately five thousand, five hundred such claims."

MR. CASSADA: Your Honor, can I make a point here because I don't think we really have a dispute and, if I could clarify it, then maybe we can move on to things that are really disputed.

THE COURT: All right.

MR. CASSADA: What the debtors have done is they have gathered further information from local counsel regarding which mesothelioma cases are open and local counsel have discovered that there were many, many cases that were dismissed of record that had not been reflected in the database. And so it was updated and the effect of that was to reduce the number of pending claims known to the debtors from about fifty-five hundred to about five thousand. I explained that to the court at our last hearing.

The number that Mr. Clodfelter referred to eliminated

claims that were six or seven years old and older. Now, we have not changed our plan. We plan to send the questionnaire to everyone known to the debtors to have pending mesothelioma claims. If the committee does not trust the process that we went through, we have got no problem in sending the questionnaire to the people, to the five thousand, five hundred the records indicated as of the petition date. In fact, we know that five hundred of those claimants have claims that are actually dismissed and therefore wouldn't complete and return the questionnaire but, if it makes the committee feel more comfortable, we are certainly willing to send it to all of those persons. We are not trying to engage in mission creed or do anything else to limit the number of claims.

And the only other issue is that there are – we know who all of the law firms are, and they may have other lawsuits where they haven't identified their clients as having mesothelioma claims, and we have been just looking for a practical, commonsense way to capture those claims.

So really there is no dispute on this issue at all and I don't – unless Mr. Swett, after hearing that, believes there is. So I don't think it's really worth the –

THE COURT: As long as we can define broadly who it goes to, I think it's best. The information that comes back will help winnow it down, and that will be known to everybody and we won't have a dispute about – I would hope that we could

eliminate a dispute about the basic facts.

MR. CASSADA: Absolutely, Your Honor.

THE COURT: So that we can –

MR. SWETT: I think that would bear discussion between us. I understand what Mr. Cassada just said. It comes as news to me because our initial analysis through our own claims consultant of the impact of the changes in the database goes beyond ones that have now been reflected as dismissed without payment, a category that is not self-defining anyway, but also other changes in status including closing cases without any reference to judicial action or a withdrawal by the claimants. So we can discuss that, and I am happy to hear the debtor's willingness to do that.

The point now is that this order expresses a different conception and ought not to be issued in this form. But I will cut that short, then, on the assumptions that Mr. Cassada and I can work out something on that and submit it to the court.

MR. CASSADA: I guess the open issue, though, is still the –

MR. SWETT: I have got a huge issue regarding the unknown disease claims, and I would like to turn to that now.

MR. CASSADA: Correct.

MR. SWETT: This is an aspect of the problem that the debtors talked about at the bar date hearing.

THE COURT: Well, let's – I don't want to cut you off

but I think I probably should.

MR. SWETT: Okay.

THE COURT: Because I don't think we ought to deal with the unknowns now. I haven't been – nothing I have ordered to-date has been with them in mind and I think that is a new subject that ought to be dealt with separately. I don't have – you know, I don't have any strong feeling about it one way or the other, I just haven't ever dealt with it before, and I think now is probably not the time and that it is not necessary to do that with this questionnaire, that we can get this in the works and going and deal with the rest of the people in some other fashion and let you all have a chance to hash that out and see where that goes.

MR. SWETT: Thank you, Judge.

THE COURT: I mean, I can tell you I wouldn't have embarked on a questionnaire procedure if I thought it was going to go to thirty thousand people. It's only the limited, that we were dealing with the limited, that kind of encouraged me to think along the lines of doing this. So I think maybe that there is some other way to deal with that. It may be that we just shouldn't touch that can of worms. But I think that that's a separate issue that we don't have to deal with in this questionnaire, so let's put that off.

MR. WORF: Can we reserve our rights, Your Honor, to file a motion and –

THE COURT: Sure, we will reserve all of your rights. I mean, just bring it up as a separate matter and we will deal with it as a separate matter, and it may be that, you know – because it is entirely a separate thing.

MR. WORF: I would want to just – I don't want to let the accusation that we were pushing this in at the last minute go unanswered, and I will just say very briefly we, all along, thought that was within the definition that everyone was working with on the questionnaire, and it is perfectly understandable that the court wants to delay that now, but that is not something that we were trying to push in at the last minute.

MR. SWETT: I think probably – thank you, Judge, for cutting me off. That advances the ball a lot, which is perhaps a telling comment, but I would like to march through the highlighted – the red line version of the committee's form of a proposed order just to highlight the thinking behind the changes.

On page two, we have inserted in the first partial paragraph the reference to the court's determination on March 31 that asbestos claimants wouldn't be served with a motion that required or invited comment and argument about the motion, and that their objections would be preserved for later. That's simply a housekeeping provision that more accurately reflects the process we have gone through.

The underscored language at the bottom of that paragraph simply calls attention to the fact that the personal injury questionnaire has been sought in the debtors' papers from the beginning, argued by the committee and ruled upon by the court as a proposed procedure for estimation and the estimation proceedings.

The reference to Rule 9014(c), we have argued to you repeatedly that the motion is misstated under Rule 2004 because we have been for some time now in a contest over estimation and what that process should be like and what the scope of the facts that need to be developed would be and what the discovery should be. And in that context, the rules are clear – the case law is clear Rule 2004 doesn't operate, Rule 26 does.

We acknowledge that this is kind of a hybrid discovery device. The court has ample discretion in Rule 9014 to apply the part seven rules of discovery with full rigor or otherwise and, if need be, one can always link those rules and the plan formulation provisions of the code to 105 and decree that this hybrid information gathering exercise is going out as a function of the court's powers to authorize it under those provisions of the rules and the code but it isn't 2004.

Paragraph four was our effort to address the scope of the distribution of the questionnaire, which is now going to be subject to further discussion among us.

Paragraph five is modeled on the debtor's form that

they put in today but with significant changes. We contemplate that there will be a scheduling order that we will discuss with one another and opposing counsel will hopefully agree upon or come as close as we can and then tender to the court for entry to govern the case development of the estimation proceeding so that there would be a cutoff date for fact discovery, a cutoff date for expert discovery after the rendering of reports and taking of depositions and other interim deadlines as the parties may agree would serve the purposes of that proceeding order that the court might require.

But we are not in a position to do that now because we just have gotten jammed up here. Mr. Cassada is about to go away on vacation. My hope is to have significant discussions before he leaves for a couple of weeks and get as far as we can, perhaps to conclusion, but that shouldn't hold this up was my thought. But, on the other hand, they have appropriately wanted a time table in this order so it would be plain to the claimants who receive the questionnaire with this order attached, and so what we said is a further order to be made by the court for scheduling all aspects of the estimation proceedings shall incorporate the following provisions. And then, based on discussion with the debtors, we wrote in June 24 as the date for issuance and, further down, October 24, a hundred and twenty days for response, borrowing some of these other language from the debtor's version.

We would urge in sub-part (d) that the cutoff for written responses, mailed responses, be the post-mark date of October 24, not mailing in time for Rust to receive it by October 24 because that would just generate disputes and because, if my own experience is at all typical, the timing of mail delivery has become quite variable.

We contemplate in subpart (d) as it continues on the next page, page five of the red line, that the claims agent here is not just serving the debtors, it is an honest intermediary, a clearinghouse for this information that's being gathered. And so our thought is that they will create a database that incorporates all of the responses, including whatever attachments are submitted or required, in some agreed turnaround time. We said here by a date to be fixed in the scheduling order. And then each of the participants in the proceeding would then receive a duplicate of that database.

A word about the parties to the proceeding. The active parties thus far have been, of course, the debtors, the committee and the FCR, occasional appearances on other motions by the debtors' parents.

We recognize that, you know, this is a bankruptcy contested matter. There are broad rights of participation. We think the orderliness of the process would be well-served if there was a cutoff date by which people who want to participate would have to come in and move to intervene and, if such a

motion were granted, they would then be bound by this order and the stipulated protective order as though they were parties to the latter as set forth in the underlining on page six at the top of the page.

Paragraph six, the redlining restores the statement about future process to the form it was, I believe, in our original submission of this order. The point we were trying to make is to make clear to the claimants that they are supposed to record their objections as per the instructions in the form but there is no defined process as yet for addressing them.

The next page, the changes appear to be simply conforming changes to the points I have already made. In paragraph ten and following, we have the very significant differences in the use restrictions and confidentiality requirements that would pertain to the estimation responses.

I am not going to try to go back through from square one the arguments that we made to you when first propounding these suggestions other than to say this: To the degree that the claimants here are facing a manifestly hostile aggressive debtor whose has made no secret of its intention to engage in other litigations besides the estimation, and those people who receive the questionnaire necessarily have to be on their guard about that and, on the other hand, it is necessary for the plan formulation process, if the questionnaire is going forward at all, that the responses be robust.

So people need to be assured in strong terms that the responses will not be permitted to be abused for purposes other than those intended in the order allowing the questionnaire to go forth in the first place.

The court will have ample process and the ability to authorize, or limit, or control or not authorize other litigations having something to do with the claims, but this process is for the questionnaire, is for the claims estimation proceeding as a function of plan formulation, and it shouldn't be tainted by the suggestion that, when you fill this out, you are giving ammunition to a hostile debtor who fully intends to make use of this information some day and in some, as yet unknown, context to attack your interest. If they want to do that, they can tee up that proceeding and we can have it out over whether or not it's appropriate and the discovery can go forth in that proceeding or those proceedings as you deem appropriate but it ought not to creep from this hybrid discovery process for the estimation and plan formulation purposes.

So the underscoring here compares this, of course, to the debtor's version but, if you compare it to the original that we put in on April 22nd, you will see we are just adhering to the basic idea that this information ought to be confined to the uses of the estimation proceeding, and we are building in the protections that the parties and the court in the MLC case,

where the Bates White firm was the opposing expert, found useful and appropriate to encourage the robust response and to provide adequate assurance against abuse, including very significantly the control over the digitalization or the uses of digitalized information emerging from this data set. I explained at an earlier appearance that in that debate about discovery in the *General Motors* contested estimation proceeding, I learned in dialogue with lawyers who were speaking for Bates White, that they have other data sets that they have created from other cases, some of which they believe are available for unrestricted use, and that they are zealous about linking these data sets to maximize the information that they have in any given context about a particular claimant who shows up in the Garlock questionnaire responses.

So they want to associate this data set with some other data sets that they believe are generally useable without constraint, and the risk is that the merged set will bleed over in Bates White's administration of this complicated logistical problem into the sets that they regard as freely usable. They will lose sight of the restrictions and suddenly the use restrictions and confidentiality provisions of this order will be functionally inoperative and impossible to police.

So that accounts for the detail of which those provisions are written and they were written with a very close dialogue with the lawyers for the Bates White clients in the

General Motors case.

Your Honor, that completes my comments in response to Mr. Worf's.

THE COURT: Anything else, Mr. Worf?

MR. WORF: Thank you, Your Honor. I guess I will start with confidentiality. That's essentially where Mr. Swett left off.

We are, of course, willing to talk with the committee about the precise form the confidentiality restrictions take, but the reason why we didn't make much progress in coming to terms on it is because we hold true to two principles. First of all, the debtors have to have an opportunity to challenge the confidentiality of some of the questionnaire information. And, second, as the court said on April 28, the debtors or other parties should have the opportunity to move to use it for purposes other than estimation. Not that they should have the right from the outset but that the court would reserve judgment on that and that there could be a motion permitting other uses. That's all we are talking about.

First of all, to make clear the GM analogy. My understanding of that case is the confidentiality provisions where this was drawn from were from the trust discovery that Judge Gerber was ordering and that, of course, was not just the current claimants, that was many, many past claimants against GM. I believe it was all the past mesothelioma claimants

against GM were included. That was a different kind of information than what we are talking about here, and it would be a mistake to bring this over wholesale from that context when it was a completely different context.

Now, let me explain why we think it's important for the debtors to have an opportunity to show that certain limited information, such as the Garlock exposure allegation, are not confidential. It would be a distortion of what the committee says it is trying to simulate, which is what would have happened in the tort system for this to be a black box and for it to be a black box around those allegations, in particular, because when Garlock was a defendant for thirty years, there was no restriction on Garlock's sharing with other defendants allegations the plaintiffs had made that they were exposed to a Garlock product. That is not confidential information. It is just not.

Now, we have been willing to say, look, we will treat that as confidential from the start but, if there comes a need to share it with someone else, we should be able to come to the court and make a motion. That's all we are saying, is that it shouldn't be put in a black box right now. Not just the prejudice to the debtor but imagine the poor incentives it gives to claimants who are answering this questionnaire.

With the knowledge that this is going to be a black box, it's possible that the results that we get back from the

questionnaire are not going to be as reliable as they would be when the claimants know there is some possibility down the line that someone might check up on it. Not to cast any aspersions on any claimants or any particular claimants but that's just a natural human impulse. We think that presents bad incentives. That's a reason why that information is not private in courts in general and, again, we are not saying that right now it should be deemed public but just the court should have a hearing on that at some point and allow us to come in and show that those particular allegations should be shared. And, again, anything that is truly confidential would be protected and the court would have a firm hand over that. That's a reason why we couldn't agree on these confidentiality provisions.

Again, as far as the Bates White allegations about the commercial interests, there is no possible commercial interest that Bates White could have in the Garlock exposure allegations, to take one example. Again, those allegations are what Garlock knew and was able to share with the world for thirty years, and it's not – you know, we could have a discussion over particular parts of the questionnaire, whether that allegation touches on any of them, but that's one area where it's obvious there is no problem. And, again, we are saying protect it now, give us the opportunity to challenge it later under the terms of the same stipulated protective order

that the debtors have been subject to.

As far as the use of the information, it's a similar thing. The debtor's order says, as the court said on April 28th, that it is only going to be used for estimation unless someone makes a motion. The difference in the committee's order is that they don't have that opportunity to make a motion. So, again, the black box concept, which we think is inappropriate and there haven't been findings made to support such a treatment.

So that's our views on confidentiality. We are willing to go back to the drawing table if the court makes those principles clear, and I think that we can settle on something pretty easily if those two opportunities are preserved. Otherwise, I think there is a potential for delay in getting this out. We are as anxious as anyone to get it out and start this process moving.

The other big issue is the exposure attachments to the trust claim forms. I won't go into my entire presentation from the last hearing, but the court heard how important those trust claim forms are to us and, in particular, how important the allegations of exposure are. Mr. Glaspy testified that that evidence of exposure against the trusts and the products for which they are responsible disappeared over the last decade. The question now is, is it coming back, and there is a dispute over if it is coming back, what form is it coming back in?

We heard Mr. Swett say, and he claimed again today that there is a difference between the trust meaningful and credible exposure evidence and the quantum of evidence that would benefit a defendant like Garlock in the tort system.

Well, that's a dispute. Is that true? What are the claimants providing to the trust? That is important in modeling Garlock's future liability, and we could, you know, bring an expert in to testify to that but we thought that was pretty clear from the experts that we have put on already. So that's the importance of it.

The example affidavit that I put into evidence from Mr. David Puller, who I believe is a relative of Reginald Puller, who is the claimant, but it does contain information in there that won't be in the questionnaire. It says that he worked at a site where National Gypsum products were present, a trust product. That is not in the current version of the questionnaire and is something that is important to us. We viewed the requirement to attach the exposure evidence as a targeted way to get at a very big issue - is the evidence specifically against the trust coming back and in what form.

We are not covering all of the defendants because this isn't, as Mr. Swett pointed out, applicable to the tort system. But as the court is well aware, the trusts are the big issue in this case. So it is a targeted way to get it. They are documents that are already created, and I would urge the court

not to take the allegations of burden as gospel truth because the firms that have the largest number of claims are the ones who are most likely to have sophisticated databases where this information is easily obtained and filed away. And again, if they want, they can just execute the authorization and we can get it from the trusts who we know have that capability. That's where we got Mr. Puller's affidavit. We got that from a trust and prepetition, response to a prepetition subpoena. We have had it for some time, but we got it from a trust.

Some of the more minor issues: The committee says that the order should give debtors authority to issue the questionnaire instead of requiring the claimants to complete it. The requirement to complete it is from the version of the questionnaire that everyone has been working with. That's where we got it from. We thought that's where the court was going. We think that an order that just says authority to issue without any requirement that it be completed could be disregarded by claimants, would be treated potentially as a nullity, which would just delay the case and prevent this process from moving forward.

The language about how the timing will be incorporated in a scheduling order, we don't see any reason to wait for that. We don't know how long it is going to take us to get that scheduling order done. People are going on vacation, and we think that the timing should be in this order so that we can

go ahead and know what our schedule is.

We don't think there should be a date for Rust to complete the database. It's too early to know that, to know how long it is going to take. We don't know what the responses are yet. There is this specter, this constant specter of objections. So we don't know exactly what we are going to get back and how soon Rust will be able to put that database together.

We have in our order the requirement that Rust provides the - make the forms available to the parties and create a database but we have it open-ended. They are certainly not going to drag their feet.

Our order also has Garrison involved in inputting the paper forms. We think that's a mechanical task and one that we should not pay Rust to do. Again, Rust will make the actual forms available to all the parties so, if they have any doubts about what Garrison did in inputting the forms, they can audit Garrison and raise those issues, but it is a mechanical process.

We think equity should be in the order as one of the parties that has access. They have been a participant in these hearings and will obviously likely be a continued presence. The financial creditors, as well, if they would like, should be part of the order. I just did not have a chance to confer with them before this.

That's all I have. Thank you, Your Honor.

MR. GUY: Your Honor, it's Jonathan Guy for the FCR. May I be heard briefly?

THE COURT: Yes.

MR. GUY: Thank you, Your Honor. The court has made it clear that the debtors are entitled to appropriate discovery to assist their experts in presenting their theory that tort values are not applicable in determining aggregate liability at the estimation hearing on aggregate liability that is going to take place, and we hope that takes place sooner rather than later, but that discovery shouldn't swallow the goal, and I think the court has made this clear also, of getting to that hearing quickly, inexpensively, or at least as inexpensively as possible and without a burden to respondents or invading any of the applicable privileges while at the same time protecting confidentiality, and that the court has gone to some pains to balance those needs of the debtors against the concerns of the respondents and the burden. And we just urge that the court continue to do so.

And in terms of specifics, the only thing that we would add is the more straightforward this form is, the quicker it can go out and the quicker we can get responses.

On confidentiality, one of the concerns that was raised there was that, well, this is a way to keep people honest. I believe that the form requires some verification

from either the claimant or the counsel. That should be sufficient in that regard.

And from our perspective, Your Honor, we just need this to go out. As Your Honor said, this needs to get in the works and get going. We have taken a long time on this. It has been very expensive. I think, at the end of the day, it is not going to have a huge difference to what the experts are going to say to us. Dr. Bates has already presented his theory to the court. The debtors have presented that theory over and over, and there will be data there that they can rely upon, but we have got to get it back from the claimants so we can get to estimation.

So I would just urge the court that we get the form out. There will be a firm date. We don't go back to the drawing board on any issue because this will be, what, the third go-around now, and we set a firm date, reasonable date for getting those forms back and then we can get to estimation.

Thank you, Your Honor.

THE COURT: Mr. Swett.

MR. SWETT: Your Honor, in reverse order, I would like to discuss with counsel for the equity and counsel for the trade creditors before taking a position on whether their participation should be assumed and built into this order. I am open to that possibility but I would like to discuss it with them.

With regard to the idea of including the transmission date for the questionnaire and the response date in the order, we agree. That's what ours says. It's just that we also contemplate, and the court should contemplate, that there will be a scheduling order governing the whole estimation proceeding in which those deadlines will be incorporated. That was the structure that we adopted to address the problem of not allowing the larger scheduling order to hold up the show on the questionnaire but reconciling the questionnaire deadlines ultimately to the overall schedule.

The idea that the questionnaire will be a nullity unless the order says that claimants are required to respond, which in some sense is in derogation of the objection right elsewhere preserved, is misplaced. What this is, is a discovery request. Because it's an unusual hybrid for a specific proceeding in which the court exercises a large discretion, it's been subject to all of this preliminary process, but it's a discovery request.

When they put out a discovery request, they don't typically say the court has ordered you to do this. They say we direct you to do this and, if you have a problem with it, you take it to the court, and that's the model that we are suggesting is appropriate even for this hybrid.

Mr. Worf sowed some confusion in his last comments about the interplay of the tort standards with the trust

standards. The trusts are settlement vehicles. They exist not to contest claims but to identify the legitimate ones and pay them quickly with a minimum of process. So their standards do necessarily differ from those in the tort system and that's an inescapable fact. The trust distribution procedures themselves make that abundantly clear.

Now, it doesn't matter here, though, because their issue, as they articulated it from the beginning, is how much relief in terms of ultimate liability or payment is Garlock going to experience from the fact that payments are flowing from the trusts and, for that matter, from other sources.

Well, they will get that, the basis for drawing their inferences on that, out of the questionnaire because the questionnaire will require the claimant to identify the trusts against which it has filed claims and state whether or not a claim has been paid and what the amounts that the trusts pay on average are public information published in the trust distribution procedures approved by the courts creating those trusts.

So there is absolutely no need for them to dig into the particulars of whether a given claimant is just checking – telling the trust that he was on a site that's on the trust official site list as a place where their predecessor's product was or whether instead he has got, you know, nitty-gritty deposition, co-worker affidavit and invoice type evidence to

establish that the trust predecessor's product was at a given site and that he came to be personally exposed to it there. It doesn't matter for their issue. This is a macro, not a micro exercise, and that's one of the keys to the efficiency and utility of the estimation process, which is not buried by the rival theory that they have articulated about exactly what it is we are supposed to be estimating.

Now, precisely because the questionnaire pulls into one place information which in the tort system was rarely, if ever, routinely discovered, it is of potential commercial interest to an outfit like Bates White who wants to be in the catbird seat when it comes to brokering a deal – I am sorry, they are an affiliate of Litigation Resources Group – who wants to be in the catbird seat when it comes to advising clients in risk transfer deals such as we described in a previous appearance.

So I just take exception to the glib assertion that the risk identified and responded to in our use restrictions and confidentiality provisions, crafted with the same firm that now acts for them as the expert, is just misplaced.

Now, I heard him say that they are willing to discuss that aspect of the order, and I welcome that discussion but I just wanted to flag that I don't agree with Mr. Worf's facile dismissal of that concern.

Here is the most disturbing thing of all about the

position that has emerged in this last exchange of drafts and the comments today: The debtor seems to have in mind some exercise where it is going to amalgamate litigation force against the tort claimants by going to other parties and say show me your exposure information and I will show you mine, and we will gang up on these claimants. And what that is, is a prescription for the mother of all tort suits. It is not what we are about here.

We have here a defendant that needs to be reorganized, and we are driving towards a plan of reorganization, and the estimation is for the purposes of plan formulation. It is not for the purposes of equipping Garlock to intensify and magnify the tort litigation that it waged for thirty years to the end where it was unable to do so out there in the courts that normally handle those things and so came into the bankruptcy court. It is a misplaced ambition for the discovery that is appropriate for estimation, and it is very disturbing as a sign of the debtor's future intentions which should not be encouraged by the provisions of this order.

Thank you, Judge.

MR. WORF: Your Honor, may I make three quick clarifications?

THE COURT: All right.

MR. WORF: First of all, we keep hearing this statement that the questionnaire seeks information that was

rarely, if ever, sought in the tort system. That is –

MR. SWETT: That is not what I said. I said in one place, not routinely.

MR. WORF: I don't know what you mean by one place but Garlock asked these same questions hundreds of times per year in cases that I have personally seen where they did discovery about these very issues, including Garlock exposure. So that's just not correct.

Second, the debtors' position is not just that relief will come from the trust payment but also that the restoration of evidence, when claimants are developing evidence of exposure against the trusts will also decrease Garlock's trial risk and result in lower legal liability and settlement values. That's why the evidence is important and what the nature of that evidence is, and the court heard Mr. Glaspy about that. Nineteen and one in trials when that evidence was on the table. The record got a little worse over the past decade. What's going to happen in the future? That's why it's relevant.

Finally, as far as requiring claimants to answer this, there is a form of discovery that amounts to a court order requiring documents and information to be produced. It's a subpoena. And this is closest in nature probably to that, and we think it's appropriate that the order, just like a subpoena does, require the claimants to answer it. They can have their objections, they can bring them forward, but they should know

that this is something that has taken a lot of time and effort in these cases and should have some force behind it.

Thank you, Your Honor.

MS. CRABTREE: Your Honor, one quick statement.

THE COURT: Yes.

MS. CRABTREE: This is the first time we have heard today that the parent may not be involved or able to be given access to discover it. I just want to reserve my rights to bring that argument before you and make certain we are not foreclosed by the events today to seek that discovery.

THE COURT: Sure. Okay.

All right. Well, let's do this and I will try to have some semblance of order here but, first, on the confidentiality, I think that the responses should be treated as fully confidential and that they should be used only in the estimation process. Although as I said before, I think that that designation and such should be without prejudice to parties by motion and notice to everybody involved if they want to raise that issue at a later date. I think I can foreclose it forever, but I think that the only purpose about which we are about here is the estimation process and that that should be the limit of the use of the data at this point.

The exposure information, I will order that the claim form alone be sufficient and that the language about additional exposure information not be included. It seems to me that that

is consistent with the rest of the questionnaire. It's particular details that obviously would be of interest to Garlock but I think they are not necessary for the estimation process and therefore I don't think I should require those to be included.

As to the requirement or the statement of requiring completion, I think we should include this. I agree with Mr. Worf, it is really like any other discovery, an interrogatory or subpoena goes out commanding a response. Implicit in that is the right to object and, of course, those rights are included in this form. So I don't think anybody will be intimidated into thinking they have lost their right to object.

I think we ought to include a date to send it out and a date to respond to it and we can deal with the other matters later. I think it would be good to have the scheduling order that Mr. Swett has raised. I don't know that we need to include a statement about this in this document. I don't think that's necessary, but I hope that you all can talk about that and, if not, maybe I will bring it up.

I think it's probably a good idea to have in this order that the data that's the result of this will be shared by the parties, and I think that we ought to limit it at this point to the parties who are involved in the process, which would – directly – which would exclude the equity and trade and financial creditors, but we will let you all – let that be

without prejudice to you all raising that issue at some point down the line if you want to, and there may be a real difference between looking at the data versus the results of the data. So we will see about that. But at this point let's leave it at the parties to this litigation.

I think we ought to either leave out the reference to 9014 or include everything else including the kitchen sink with it because I have got no earthly idea what authority I am doing this under other than it seems to me to be necessary and helpful to the process. It's probably best just to remain silent on that. When pushed, I always instinctively blurt out 105. So this is a process that – well, I think this will be helpful to people and to the parties and whether it is discovery under 9014, or a subpoena, or whatever it is, hopefully it will advance the ball. And I don't think it's meaningful to anybody to what statute we cite right there, that that's necessary.

Let's see what else we have here. We talked about the unknowns. We won't deal with them here. I believe you all were going to talk about who to send the thing to. I think the definition of the known parties at this point ought to be as inclusive as possible or as broad as possible.

That's about all of the notes I had. Are there other items that I have missed?

MR. WORF: Ted, you don't have any objection to the

requirement that the paper forms be unique?

MR. SWETT: No.

MR. WORF: Okay.

THE COURT: No, I think that's a good idea, yeah.

MR. SWETT: I have no problem with that procedure.

MR. GUY: Your Honor, it is Jonathan Guy. I apologize if I missed this, but do we have a fixed date for when this will go out and when the response will come back? I am worried that, if we refer that back, then we are going to have more delay in terms of trying to reach agreement between the parties.

THE COURT: I kind of like the dates you had in there.

MR. GUY: Thank you, Your Honor.

MR. WORF: I think, given today's rulings, we can put together a final order in short order and give it to Your Honor early next week.

THE COURT: Okay.

MR. WORF: And hopefully get it entered, so these dates –

MR. GUY: That was my only concern, Your Honor. Thank you.

MR. SWETT: The dates are the same in our rival order, so we are agreed on when it goes out and when it gets responded to.

THE COURT: Okay.

MR. WORF: I think the only other issue is the expiration date for the authorization. Maybe that is something we can talk about.

THE COURT: I mean, I was leaning towards the date of the estimation trial. It would seem to me that it might be helpful to the trusts to have a date in a document and, if that's the case, maybe if you all would just kind of pick your best guess at when something like that might happen because, I guess, a trust is going to get this form and you don't want the recipient of the form to have to go do research to find out whether it is still valid or not; if it had a date in it, that might be useful.

MR. WORF: We also don't want to have to put pressure on the trusts to answer it quickly before an authorization runs out which –

MR. SWETT: The impact of that is to delay the discovery cutoff, but that seems to me, Your Honor, to be the logical date because it is discovery and so, when we structure a calendar, we will have to take account of the fact that the authorization form survives and it's going to come in as late as October 24th and that, for those claimants who use it, Garlock will have to go to the trusts. That will build in some interval before the discovery cutoff.

THE COURT: Okay. I suspect that's going to have to be – you all try to talk about that and, if you can't, early next

week I will pick a date.

I will be here through Wednesday of next week, then in Asheville, but around, and then back Monday or Tuesday of June 6th and 7th, but leaving and gone June 7th from midday as a practical matter. Okay.

Let's take a break for about ten minutes and then we will come back or do you want to break for lunch and come back early or do you want to keep going and try to finish it up before lunch?

MR. SWETT: Your Honor, we are at your disposal.

THE COURT: I am easy. I mean, you all –

MR. MILLER: Your Honor, I would expect that my argument is going to be very brief, fifteen minutes top.

THE COURT: Well, let's take a ten-minute break and come back and then we will finish up before we go to lunch.

(Recess from 11:53 a.m. until 12:05 p.m.)

THE COURT: Have a seat.

Okay. We have, I believe, the debtors' objection.

MR. MILLER: Yes, Your Honor, and I don't know whether Mr. Swett wants to go first or how we want to handle this. It is their application. I wasn't sure if you had a preliminary statement.

MR. SWETT: I do. I was tempted to just rest on my brief, Judge, but then we didn't file a reply because we were trying to economize in this process. So to really join issue,

I think that Mr. Miller and the court ought to hear at least my brief account of response to the issues raised in their written objection, which of course flows out of a series of monthly objections and responses which are collected in our brief in support of the fee application and represent the main source of information on these issues, and I hope is illuminating to the judge, to the court, about what's going on in the interplay between the parties on these fee issues.

The long and the short of it is that the debtors are consistently objecting to a very significant percentage of our fees and, by the time it gets winnowed down through the responses to the monthly objections and concessions and comes up to the briefing, they are still hanging in there for something like twenty percent of the fees charged over the interim period. This has been consistent from the beginning of the case when they objected to our rate structure and our retention application as representing some sort of twenty to thirty percent premium over what they thought it ought to be. And so from my perspective, one of the things that's going on here is the debtors are just bound and determined to object and are casting about for rationales because they just don't like the numbers. That's not an appropriate basis for a fee objection but it certainly has implications for the merits of their arguments.

Here, they are saying that the issues have to do with

insufficient descriptions, alleged duplicative effort or overstaffing, tasks that they think took too long in relation to the product and services that they say were without benefit but far and away the largest issue has to do with their efforts to attack the amount of fees incurred in what they characterize as resisting their discovery but, in fact, when you look at the time charges that they collect under that description also includes affirmative discovery and strategy considerations going beyond response to any particular one of their many discovery motions.

Now, it seems to me quite obvious from their paper that they are attempting to force their present issues into the framework of ruling on the first interim application and, in particular, on the court's view that the fees incurred in connection with the information brief were larger than ought to be paid. And I would like to begin by drawing a fundamental distinction between that unique project and the ongoing work in the case.

The information brief was unique in our experience as a firm. We had never done that before. We were responding, as you noted last January, to a particularly aggressive opening gambit by the debtors and thought it was necessary and useful to try and pull together our experience of the issues in a whole lot of different context into some coherent presentation to set the table for what has followed and will continue to

follow. But that was a unique task. It was uniquely important to the constituency. So it was actively monitored by the members of our committee and did involve active participation by a large group of professionals in our firm, and Your Honor seemed to believe that that was more people than ought to be charging for that, and so you nicked us for that, and I am not here complaining about that. I am explaining that the objections with respect to the second interim are very different because the work involved is very different and does not lend itself to facile analogy to the issue presented by the information brief.

The main thrust of the debtors' effort to find some basis for objecting to the some three hundred and forty thousand dollars in fees that they attribute but not strictly directly to resisting their discovery is that the descriptions are insufficient to tie the work to any particular piece of output. Indeed, and the entries were so numerous that they couldn't be troubled to analyze them with particularity to separate the ones that they thought were insufficient from the ones that they would concede to be sufficient, which tells you something. It tells you that their real objection is not insufficient description; it is they just don't like the amount of fees incurred in that. But that, of course, is directly related to the amount of effort. And the amount of effort, which you have a window on from the bench as you have seen

these matters argued out in front of you, has been very great. Hopefully it has also been very useful for the court for the parties to join issue on these matters, have them well-prepared and vigorously advocated both in the written submissions and in the hearings and in the evidence presented and, of course, all of that flows from significant work in assessing the other sides's strategy and coming up with a strategy and adapting from time to time according to developments for our constituents.

You know, we hear a lot in the bankruptcy fee application world about the evils of clumping time entries. You shouldn't have an entry that says, you know, did legal research, wrote memorandum and attended to correspondence. Well, we don't do that. We are very much aware of the need not to clump, but what about clumping objections? In effect they are clumping objections to the time entries that they say have something to do with discovery without doing the court the service of descending to particulars and pointing to actual specific problems other than, you know, the occasional, quote, example that they find it convenient to put in a footnote.

But if you turn to tab (a) of their objection, you see their restatement here of the time entries that they have clumped under the notion of responding to or resisting their discovery. And I submit, and I won't take any more time on this, when you do that, I just don't think their

characterization of overly vague, generalized, undifferentiated time entries as between projects or tasks sticks. It just doesn't fit the facts. Those issues are replete with references to the different aspects of the discovery program that have been fought out. As you will recall, they include the Rule 2004 application addressed to trusts, which is the subject of a significant number of entries here, to a subpoena issued to them or rather a notice of deposition issued to the trusts over the Christmas holidays, which gave rise to briefing about the interplay of Rule 2004 and Rule 26. The questionnaire application; the application to take discovery of law firm's settlement information; the application to take discovery of past claimants; and I may be forgetting one but it has been a complex, multi-part discovery program driven by a particular strategy.

Now, some of our work, as reflected in the entries, is particular to the given pieces of that program. Others of it are strategic analysis and trying to figure out where we want to go with all of this and how we want to counter what they are trying to do, and some of the entries reflect that.

There was a time, for example, they object to some time entries of Jeanna Rickards Koski on the basis that they can't figure out which of the pieces of the discovery program she was working on. In fact, at that stage, she was working on all of them because we had in mind the possibility of an

omnibus response and, while we didn't ultimately file it that way, that work, including research and drafting, fed into the particular brief that we submitted on the particular pieces of their discovery program. So it was in no sense wasted. It was highly beneficial and necessary work.

But my main point, Judge, is an examination of the entries that they clump under this objection of generalized time entries that they can't really tell but it's too much money just doesn't bear it out. And on the subject of whether it's too much money, from our perspective it's a pittance compared to the cost that they have attempted to inflict on our constituents, and it's a pittance in comparison to the costs that the estates would incur if they were given their head in that discovery program. And I hope the court believes that the joining of issue on those matters has been helpful to the court and to the process. My perspective has been most assuredly necessary and not overdone. It's hard work because it involves taking overarching concepts of discovery and the applicable rule, bringing them to bear on a highly specific and somewhat unusual context, and trying to make the real world consequences of these discovery demands, which are easy to write and hard to comply with, real to the court. That's a hard job and we didn't overdo it and we don't overstaff it. People have discrete assignments.

Mr. Wehner, for example, has had an active role in,

along with me, crafting our affirmative discovery. He has had an active role in responding to the past claimants as I recall, on certainly the questionnaire motion.

On the other hand, Mr. Liesemer had a significant role in the briefing towards the end of last fall into December and January over trust discovery issues.

Ms. Kelleher, as you know, has assisted me in presenting these matters to the court in hearings and in writing important briefs or portions of briefs involving, for example, the past claimants. There hasn't been any piling on, on these projects.

So we fall back on the objection that, well, there are just too many professionals involved, there are too many hands on this work product. Well, Judge, that doesn't really tell you anything. In fact, I am going to hand up an exhibit that underscores this and a related point. It doesn't tell you anything that is worth noting. That Mr. Inselbuch, my senior partner, reads a paper before it goes in, so that counts as a professional logging time to that particular brief. So they get to add that to the paralegals who do the cite checking and there are two or three lawyers who had the laboring oar in crafting it and suddenly they come up with eight or nine timekeepers and, oh, my gosh, that must be redundant. It doesn't support that inference. You have to look at the time and you have to look at the entries which they have disdained

to do.

Now, in terms of the sheer numbers of professionals, I have ACC Exhibit 108 to hand up. ACC 108 is a summary that we have done on the basis of examining the debtors' professional fees application, when confronted with the suggestion that we have too many timekeepers in the matter, and we looked to see, well, how many timekeepers does the debtor have across all the firms and all the functions, and the numbers are quite impressive.

It is, after all, a large case. So I am not suggesting that this exhibit should give you necessarily pause about their fee applications because you can't tell what's behind the aggregate number of the professionals keeping time in the matter. You can see that it's quite an impressive number and you can compare it to ours and see that they do in fact outgun us in terms of the sheer number of professionals devoting time and energy to this, and it is an understatement because we don't know what Forman Perry does. It hasn't filed regular fee applications, and we don't know what the fifty-four law firms who were engaged as ordinary course professionals are doing by way of lending their efforts affirmatively to the debtors' discovery program, much less whether they differentiate that time by the particular grief that they happen to be supporting.

So the points are two-fold. Sheer numbers of

timekeepers don't tell you anything. This is not like the information brief where you had that concern. And the second thing is, when it comes to the balance of forces, we are at a disadvantage. We are not overdoing it.

So let me pass to some of the other points. They object to the time spent in response to the fee objections and they point out that some of that time showed up in the first interim but some of it flows from the months following the closing of that period. They object to seventy-two thousand dollars on that account, which is additive to the time already water under the bridge in the past period, an additive in the sense that they are not objecting to a hundred percent. They are just trying to cut us by some substantial percentage.

Well, this calls attention to the sort of what I would call asymmetrical nature of the battle that they have chosen to wage with us on our fees because what they do is they, with little investment of time, and even less of thought, they cast off these monthly objections, and we are forced either to ignore them and take our chances at the interim stage or respond to them. Because we were in the midst of a six-week long – a hearing that stretched out over six weeks or two months last fall – we weren't able to muster the monthly responses. This time we decided to try and do it differently in the hopes that it would make it a more illuminating process for the court and perhaps even obviate some issues. So we did

respond monthly, and an example is in January they said, oh, my goodness, all these entries regarding discovery, we object. We said, okay, tell us which entries you object to. What they sent us back was a list of every single entry they could identify in the fee request that had anything to do with discovery whether affirmative or oppositional. Well, that was not very helpful. It certainly didn't particularize the objections. And the next month is the same, only that time they didn't provide the response. Not that it would have been that helpful to respond with another complete list of the entries pertaining in any fashion to discovery.

But, in other words, they put us to a lot of trouble and cast at issue large amounts of fees with minimal care on their part and yet we have to respond, and then they complain about the time we spend responding. It's not as though we have attempted to overdo this. We decided that timely monthly responses would be helpful, that we would then accumulate those responses and make them essentially the substance of the brief in support and we, you know, forewent the opportunity to put in a reply brief and chose instead to rely on the oral argument. We are not overdoing it. They are bringing this problem on themselves by being overly aggressive in their fee objections. We are used to and fully appreciate the importance of a constructive fee application and objection process, and we have, in fact, tried to respond to their criticisms even when

we haven't thought they were well-founded as long as it wouldn't distort our process or chill our efforts on the part of the committee.

But beyond that, we are not willing to go. We just have to do our work and, when they put at issue a total of more than a million dollars in fees for the two interim periods, we are going to respond in an appropriate fashion to defend our position on that work and to try to beat back that ill-considered attack.

We hope that with the court's guidance on this occasion or some subsequent one involving these issues, that their appetite for this process, which we consider wasteful and an imposition on the court, will wane but so far it hasn't. Their appetite is unabated and we have to go through this process.

Forman Perry. We put in a supplemental brief in opposition to the retention of Forman Perry which would have been, I think, the fifty-sixth law firm they were retaining. We did so because of two reasons. One was that the bar date ruling intervened and perhaps changed the setting of the table as it pertained to the reasonable need for that law firm to be engaged. And also because, in attempting to justify that retention, they made very broad assertions alleging, you know, fraud and the like on the part of our constituents. So we did an analysis and spread it on the record in the form of our

supplementation or supplemental brief of exactly what it was they were complaining about as fraud. And in our view, it was very (inaudible) indeed and certainly didn't justify that overheated rhetoric, and that was a worthy project for defending the interest of our constituency whether or not you were going to appoint Forman and Perry.

So we consider that work to be amply justified by the output and by the challenge to our constituent's interest that we were responding to.

They complain that at the bar date hearing we spent five thousand, six hundred dollars, or that's the objected to amount, I guess, putting together an analysis of the costs incurred by the debtor upon whose program they were modeling their own, which is great. That wasn't easy to do because the Grace costs and fees were not reported in a way that made it easily translated, but we didn't want to overstate it because that would be misleading the court and it would also be ineffective advocacy. So we had to do an analysis and then we had to decide where to cut off the analysis for the sake of conservatism and for not gilding the lily rather than trying to reconcile it down to the last penny. And then we had to cast that in the form of admissible summary with appropriate backup. And then we had to fit that into our case about why the bar date and associated relief that they were seeking wasn't a good idea, wasn't the appropriate way to administer the case.

That time, from the standpoint of arguments I made at the end of the day at that hearing in opposition to their program, was cheap at the price. In my way of thinking, it was effective and important for the court to know.

The preparation of hearing exhibits for the February hearing, they object to some ten thousand, nine hundred dollars of that. The same thing. We are not casual about the evidence that we put in front of the court, particularly when it involves summary of more detailed evidence that is not convenient or feasible to dump in front of the court as an undifferentiated mass, and that takes time. And also the selection process. What are the issues that would benefit from that kind of evidence? Where do you go to find it? What do you do with the raw material when you find it? How do you present it to make your point most effectively? Those are the kinds of things that feed into that process of preparing a hearing exhibit. It is painstaking but that is a necessary element of the quality of the evidence presented.

They object to what they call docket management and calendar. We have briefed this under a different characterization which I think is more appropriate, which is essentially communications with the client. We put out every week an update of what's coming up on the docket, what the deadlines are, what positions have been taken so far, what the advice to the committee is and what developments there have

been in the case. We call this, for shorthand, the calendar, but it is in fact a medium of communication with clients who insist upon real time updates about what's going on in the case. It is carried out by relatively junior lawyers and paralegals with minimum oversight from me, since I am responsible for the advice. So it's a routine task. It has to be done. We have tried to make it more and more efficient. We experimented early on with having it done at Tom Moon's office but this is Tom's first involvement with an asbestos committee. They are large and demanding constituents, as I have told you before, and the phrase "herding cats" is fully applicable. And so in the end we decided we could probably do it quicker and cheaper by modeling the process on ones we follow at Caplin & Drysdale in other cases, so we took the task back.

In that month, there was inordinate paralegal time – this was January – spent on it because we had to train up a paralegal to do it, and we cut her time in half, which means that satisfied the debtors with respect to that month. That month is unlike all of the other months when it comes to this issue of the routine communications to the committee because there was no similar learning curve time in the other months. So we think we have fairly addressed their concern there. We certainly strive to make the process efficient while fulfilling its necessary purposes, and the amount involved is not large considering the importance of the task and the magnitude of the

case.

The final objection – no, I am not there yet. They object to some time spent by Kevin Maclay and some time spent by Bernie Bailor. Mr. Maclay's entries have been limited in this period to a period when he was, and I think he still is, reading the memos that go to the committee. Now, that is necessary because Mr. Maclay has the responsibility, among other things, for the debtors' efforts to gather information in other bankruptcy cases, and he needs to have an ongoing understanding of what the discovery forays are, what positions the committee is taking, what the advice to our clients are, and it's very little time. There's fifteen hundred dollars under that category. It is necessary, appropriate and not disproportionate to the need.

Mr. Bailor – let me make an analogy. We have noticed in the fee applications of the debtor's two principal firms considerable either cross-fertilization or overlap depending upon how you view it, and I don't take a position on that. I am not now intending to criticize them for this. But the Durham firm records typically a not insubstantial amount of time reading the Robinson firm's work product or participating in a meet-and-confer on the questionnaire even though the Robinson firm are cast as special asbestos litigation counsel principally charged with, you know, those responsibilities.

Well, it's important for Mr. Miller and his colleagues

to be up-to-speed with what Mr. Cassada and his forces are doing in the case on the asbestos issues and the strategy that they are articulating for their clients and co-counsel for the way forward. We understand that.

If the standard is, oh, no, no, two lawyers can't be doing the same thing, that's going to be treated as redundant effort or overstaffing no matter what, then I suppose we would have to change our view of their fee apps, but that's not what occurs to us as the appropriate standard and I would not like to do that.

Mr. Maclay is in much the same position as a Durham lawyer looking down upon Robinson work product for the needs of their own focus task in the case. It's necessary and appropriate and it benefits the client and ultimately the estates.

Mr. Bailor's time. Mr. Bailor had gone away on vacation. He logged three hours one day, catching up on what had been going on in the case. Here, Judge, I am going to tell you that, if you see fit to cut that by fifty percent, I can't cry very hard because it is a lot like the time that you cut for fifty percent in the first interim application. Mr. Bailor's responsibilities focused on the affiliate's document production, the analysis of the restructuring transactions that took place before bankruptcy and the asset valuation side of things. So there will be significant charges for Mr. Bailor in

the case but the particular entry that they singled out, the three hours of catching up when he came back from vacation, is somewhat attenuated from the specific responsibilities, and I have to acknowledge it would be consistent with your first ruling to allow that two thousand dollars in fees only to the extent of fifty percent.

They lump under another heading, which they called new filing system, some three thousand, nine hundred and fifty-six dollars in fees. This is a wrong characterization. It is not as though we created new software or electronic filing or completely revamped our system firm wide as opposed to for the needs of this case. Instead during the second interim period, the case by now had been going on for many months, the filings were voluminous, the correspondence is considerable and the need, which always arises in a case like this to be able to retrieve matters specifically, reliably, quickly and inexpensively is very real. It happens everyday. If the files are not set up, categorized, organized, labeled and made retrievable in an appropriate way, the estate is going to bear very large expenses for rooting around in the file trying to get, you know, the right piece of paper under time pressure because you are trying to link it to or relate it to a new submission that you have to make. Four thousand dollars over the period of four months for that task is not out of line.

Now, I acknowledge this is additive to other similar

administrative tasks that they are not objecting to. I am not suggesting otherwise. But this increment that they are suggesting to on the basis that, well, they were setting up a new filing system and that sounds like overhead is not appropriate. It was specific to the needs of this case. It will result in lower charges, not higher ones over time. It's a fully appropriate administrative measure and fully compensable.

Finally, they object to, under the category of a new filing system, to entries that don't have anything even to do with that project as I have described it but rather with the ordinary, humble task that lawyers have to follow of keeping their own papers in order so that the next time, you know, they get called to take steps within the areas of their responsibility, they are not caught out and they don't have a lot of ramping up time for that. That was a total, Judge, of one point six – one point eight hours across two lawyers over a four-month period. It wasn't worth an objection. It's not worth more comment on my part.

The only other thing I would say, Judge, is that the cases cited in the brief to try to turn a sow's ear into a silk purse are very inapposite. Most of them have to do with converting or with fee applications in elevens that were converted to sevens or that otherwise were taking place under circumstances where the judge had very powerful reasons to

believe that the file had been overworked or the efforts had been unproductive, and I trust that that is not the court's view of the efforts of either side in the present case.

Thank you.

MR. MILLER: Thank you, Your Honor.

Your Honor noted in the last hearing on Caplin's first fee application that this is a distasteful task for you. I can tel you that I don't like being here doing it either, just as much as I think Mr. Swett doesn't like having to defend his fee application.

This is a process that I think puts some strain on the parties' relationships and is inconsistent with what I have found to be a very collegial atmosphere here in Charlotte which we typically extend to our out-of-town brethren, you know, with great fervor.

However, this is not a typical case, these are not typical fee applications. Caplin's requested fees through the first request, the second request, March and April of this year tally a grand total of four point three million dollars. These are very significant fees and the debtors take it as part of their job to keep an eye on fees and to raise issues and objections when they feel it is necessary as part of their fiduciary responsibility to the estate as a whole.

Your Honor, as Mr. Swett noted, the debtors did object through the monthly process to approximately four hundred and

fifty thousand dollars of the one point four-seven million dollars in fees that are covered by Caplin's second fee application, and the debtors continued through their analysis as they received responses from Caplin to those monthly objections and, in addition, for example, the November objection was sent to Caplin before Your Honor ruled on the first application, and so the debtors took into account the responses that they received and the guidance that Your Honor provided in the first hearing on this and have tried to narrow the issues in the objection and actually reduced the objections that were covered by the monthly applications by about a hundred and seventy thousand dollars.

And the debtors, I think freely admitted in the papers and will freely admit here in open court that we believe the first objection had a lot of the desired and intended effect. Caplin has changed some of their billing practices significantly we think for the better and we think that the case overall is better for it.

However, there are a few issues that we raised that are still of concern to the debtors and those are primarily rooted back to three code sections. One is section 330(a)(4)(A) which says that firms are not entitled to compensation for unnecessary duplication of services. The second is section 330(a)(3)(D) which indicates that services that aren't performed within a reasonable amount of time

commensurate with the complexity, importance and nature of the task are also not compensable. And finally, section 330(a)(3)(C), in conjunction with 330(a)(4)(A) which states that services not necessary to the administration of the case are likewise not compensable.

The debtors' largest grouping of objections does relate to the ongoing discovery efforts and the Caplin firm's responses and objections to the debtors' discovery efforts. Mr. Swett stated that some of the items on Exhibit "A" may not relate to those particular efforts, may relate to their affirmative discovery. If that's the case, Your Honor, I apologize. It's difficult sometimes to tell exactly what task is at hand, but there was no intention – any mistakes there were purely unintentional.

However, as a whole, Caplin's efforts in response to the debtor's discovery request are very much like their work on the information brief in that they have had many, many professionals incurring hundreds and hundreds of hours, eighteen different professionals with over seven hundred and sixty-six hours in a two-month period working on these responses to the trust discovery, the personal injury questionnaire and discovery directed at the plaintiff's law firms.

Your Honor, I do take issue with Mr. Swett's characterization of the time entries being crystal-clear in

terms of where the efforts were going. I don't want to spend a lot of time on it but I will highlight a few examples on Exhibit "A." On the first page, there is an entry on the 3rd of July, AJS, for four point three hours, simply legal research regarding Rule 2004.

Two pages over, there is an entry by JMR on 1-11-2011, four point two hours, research for further response regarding discovery sought by debtors. Again, not clear exactly what we are talking about there.

And, Your Honor, that's important because what we would have liked to have been able to do, but simply couldn't, was try to parse through what work was related to what project, what work was related to another project and see sort of how things split out but, even assuming that it is sort of all split out evenly, Your Honor, we would submit that the time incurred was so substantial and the number of billers so substantial that there had to be some duplication of efforts on those matters.

The debtors certainly don't contend that the ACC shouldn't have expended efforts on those issues, simply that the issues appear to be overworked and inefficiently staffed and that's the reason for the objection to a hundred and seventy thousand dollars of the three hundred and thirty thousand dollars or so in fees that the debtors believed were related to those responses to the debtors' discovery.

Your Honor, the next item, and I will sort of try to take them in the order that Mr. Swett took them, is the fees incurred in responding to the debtors' objections to their fee request, and it's really a similar situation here. A hundred and forty-six thousand dollars total in the interim period. Again, three hundred and twenty-three hours of work with twelve different professionals working on it. It really is essentially the same objection as we have with the response to the discovery efforts, and I think I can just leave it at that.

With respect to the Forman Perry application, the debtors viewed that. That response is essentially rehashing issues that had already been presented. We didn't think it was particularly helpful in the issues that were at stake with respect to that Forman Perry application, and so the debtors had objected to about half of those fees or twelve thousand dollars.

The efforts to put together the information about the fees in the *W.R. Grace* case, the debtors, that was sort of – it appeared to be just a summary example of a statement that I think was fairly easy to make, that the fees incurred in the *Grace* case were extensive. The debtors didn't see the need to incur some twelve thousand dollars in putting that together and that was the basis for that objection.

Your Honor, the February 17th hearing exhibits, twenty-one thousand dollars or almost twenty-two thousand dollars over

ninety-two hours with ten different professionals, and this was just for the preparation of the exhibits for that hearing, not the – or what we tried to exclude was the preparation of the argument or anything related to that. Mr. Swett and Caplin, in its response, stated that there were a number of different issues presented at that hearing. However, it appeared to me, based on a review of the transcript, that really the only exhibits that were presented were in conjunction with Mr. Simon's testimony, and it seemed to us that those sort of limited exhibits that were illustrative of the way that a plaintiff's lawyer might prove a case against Garlock were probably at the ready and readily available and that time in preparing those exhibits simply seemed excessive to us.

With respect to the items with Mr. Maclay and Mr. Bailor, Your Honor, frankly Mr. Swett's explanation of Mr. Maclay's time, I believe, was new information to me and it may have been included in their response. If it was, I missed it, and that explanation frankly makes a lot of sense to me and I would just withdraw that objection here on the record, and I believe that the concession with respect to Mr. Bailor would be fine with the debtors, as well, so I think we can dispose of that issue.

And then the last issue with the filing system, Your Honor, that's simply good housekeeping and really frankly just appears to be overhead that would be associated with any good

file maintenance in a case. I can say that I don't believe our firm charges for those types of rejiggering of the filing system or setting the filing system up, and I think that, if Ms. Simpson were here, she would probably say that that was overhead, too, or if she saw it in our fee application, she would probably tell us it was overhead and ask us to remove it.

So with that, Your Honor, the total objections that the debtors had raised were two hundred and eighty-two thousand, three hundred sixty-two dollars and fifty cents, and there would be obviously some adjustment for Mr. Maclay's time which I certainly concede today, but I am not sure exactly how much that would be. We could certainly figure that out.

But, Your Honor, for the reasons stated primarily in the papers and here today, we would ask that the fee objection be sustained.

MR. SWETT: Your Honor, first I would like to move into evidence the exhibits tendered in the previous motion this morning.

THE COURT: We will admit all exhibits.

MR. SWETT: And the single exhibit tendered for this one. Other than that, I have only this to say. The examples that Mr. Miller pulled out of Exhibit "A" to the application for supposedly inadequate entries, research concerning Rule 2004, at the opening states of a large discovery program being initiated ostensibly under Rule 2004, with very significant

technical issues about how that interplays or doesn't with Rule 26, with the ability to serve notices instead of subpoenas on Rule 2004 targets and all of those things, and why should we have to particularize in the time entry which particular issue under Rule 2004 we are addressing when that would only invade our work product and give the other side an undue advantage.

Second, Jeanna Rickards' time on January 11, research for further response to Rule 2004 applications, that was part of the omnibus effort I described where we were trying to take the overview and pull together the themes that would be common to the different pieces of the debtors' emerging program.

I think that the time entries speak for themselves and, taken as a whole, are more than adequate.

Thank you.

THE COURT: Well, I think I should overrule the objection and approve the fee application with the exception of the minor concession by Mr. Bailor, the fifty percent of that, but it is a lot of money and it does involve a lot of people. Those are always good reasons to take a good look at it, but it seems to me that the descriptions of the time are adequate, the work that was done appears to be necessary and to the progress of the case. I didn't see unnecessary duplication. I guess you can always quibble about something should have been done quicker but I can't see from my review of the time entries in the papers that things were out-of-line. I think they were

done within a reasonable amount of time, and it appears the work is necessary to the administration of the case and dealing with the issues that have been presented.

So we will overrule the present objection, with the understanding we have, I guess, a final catchup at the end, at which time the goal is to approve a reasonable fee and there are factors involved in that that we don't know now, so we will deal with those matters later.

Okay. Thank you.

MR. SWETT: Thank you, Judge. We will consult with Mr. Miller over a form of order and submit it promptly.

THE COURT: Do we have anything else to do today?

MR. MILLER: No, Your Honor. One minor housekeeping – oh, I am sorry.

MR. WORF: Your Honor, I would move the exhibits that I introduced into evidence, as well.

THE COURT: We will admit all of those.

MR. WORF: And also introduce or identify GST 157 on the record. That was the stipulation.

THE COURT: Yeah, we will admit all of those exhibits.

MR. MILLER: Your Honor, there was one other minor housekeeping issue that was reflected as a continued matter on the agenda that we filed, which is that holdover Rochester lease issue. We still have not heard confirmation back from the landlord on the form of order that we proposed, and we just

ask that that stay on the docket or on the agenda until the next hearing in the hopes that we can get that wrapped up and get an order.

THE COURT: Okay. Well, thank you all.

MR. SWETT: Thank you, Judge.

MR. CASSADA: Thank you, Judge.

THE COURT: When is our next hearing date?

MR. SWETT: June 30, I believe.

THE COURT: All right. Good. Well, enjoy June.

MR. SWETT: We are probably not going to let you alone that long, though, Judge.

THE COURT: I am going to be hard to find for a while but, otherwise, I will be around. Thank you all.

(Off the record at 12:54 p.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Patricia Basham

Patricia Basham, Transcriber

Date: June 2, 2011